

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC MEETING

+ + + + +

TUESDAY,

JULY 11, 2006

+ + + + +

The Public Meeting convened in Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 9:30 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
RUTHANNE G. MILLER	Vice-Chairperson
CURTIS L. ETHERLY, JR.	Board Member

ZONING COMMISSION MEMBERS PRESENT:

JOHN PARSONS	Commissioner (NPS)
MICHAEL G. TURNBULL	Commissioner (AOC)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Secretary
BEVERLY BAILEY	Sr. Zoning Specialist
JOHN NYARKU	Zoning Specialist
TRACEY W. ROSE	Sr. Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL:

LORI MONROE, ESQ.

The transcript constitutes the minutes from the Public Meeting held on July 11, 2006.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

AGENDA ITEMPAGEOPENING REMARKS:

Geoffrey Griffis 3

FRIENDS OF ST. PATRICK'S EPISCOPAL DAY SCHOOL, LLC

APPLICATION NO. 17429: 4

Motion to Approve Special Exception Under 2516 . 13

Vote to Approve Special Exception Under 2516 . . 13

Conditions for Approval Under 206 20

Motion to Approve Under 206 25

Vote to Approve Under 206 26

SHARCON HOSPITALITY OF D.C., INC.,ON BEHALF OF SUTON, LLC

APPLICATION NO. 17484: 27

Accept Exhibit 33-DDOT Report in the Record . . . 29

Motion to Approve Application 17484 43

Vote to Approve Application 17484 46

LILLIAN K.H. AUDETTE REVOCABLE TRUST

APPLICATION NO. 17477: 48

Motion to Approve Application 17477 58

Vote to Approve Application 17477 58

DOUGLAS GEORGE JEFFERIES

APPLICATION NO. 17495: 60

Accept Filings into the Record 63

Set for Decision on July 18th 63

RLA REDEVELOPMENT CORPORATION

APPLICATION NO. 17483: 64

Motion to Approve Application No. 17483 80

Vote to Approve Application No. 17483 85

INTERVENOR'S CROSS APPEAL

APPEAL NO. 17468-A: 86

Motion to Grant Cross Appeal 89

Vote to Grant Cross Appeal 97

MOTION FOR RECONSIDERATION OF APPLICATION

NO. 17395-A OF JEMAL'S CITADEL, LLC: 98

Motion to Dismiss Reconsideration 102

Vote to Approve Dismissal of Reconsideration . 103

Motion to Reconsider 105

Vote to Approve Motion to Reconsider 108

Motion to Deny Motion to Reconsider 108

Vote to Approve Denial of Motion to Reconsider 109

ADJOURN:

Geoffrey Griffis 110

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

P-R-O-C-E-E-D-I-N-G-S

9:55 a.m.

CHAIRPERSON GRIFFIS: Good morning, ladies and gentlemen. Let me call to order our 11th of July 2006 Public Meeting of the Board of Zoning Adjustments of the District of Columbia. My name is Geoff Griffis, Chairperson. Joining me today is the Vice Chair, Ms. Miller, and Mr. Etherly. Representing the National Capital Planning Commission is Mr. Mann, who is not going to be with us this morning, and representing the Zoning Commission in the first case is Mr. Parsons and we have other rotating Zoning Commissioners which will be present for the deliberation of the cases as they are called.

We have a published order on our decisions. Of course, as you well are aware, this is our Public Meeting, so all the cases that we have that we will be calling this morning, we have already heard. There is no other time for additional testimony from the public. This is a time at which we will, in the open and before the public, deliberate on our cases and make decisions accordingly.

Let me just ask that people turn off cell phones and beepers, at this time, as we are being transmitted and always transmitted in the public

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 forum. The most important, of course, is the Court
2 Reporter. We are also being broadcast live on the
3 Office of Zoning's website.

4 As I said, we do have the published
5 agenda. I think we're going to stick fairly close to
6 it and get through a large agenda for this morning.
7 So we appreciate everyone's patience and we will break
8 for lunch sometime around 5:00. That being said, let
9 me say a very good morning to all those folks with us
10 this morning, the Office of Zoning, Ms. Bailey, Mr.
11 Moy, Mr. Nyarku is also with us assisting the Board.
12 We have different OAG members, Ms. Monroe is with us
13 on the first case in the morning.

14 Anything else I need to say? Probably
15 not. Let's move right ahead and pardon me?
16 Excellent. Why don't we call the first case for
17 decision this morning?

18 MR. MOY: Yes, sir. Good morning, Mr.
19 Chairman, Members of the Board. The first case for
20 decision is Application 17429 of The Friends of St.
21 Patrick's Episcopal Day School, LLC, pursuant to 11
22 DCMR 3104.1, for a special exception to allow the
23 development of -- well, it was originally published as
24 19 single-family detached dwellings, but the record
25 notes that the application was amended to allow 18

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 single-family detached dwellings as a theoretical lot
2 subdivision under section 2516, and a special
3 exception to construct a private middle and high
4 school, 440 students and 100 faculty and staff, under
5 section 206, in the R-1-B District at premises 1801
6 Foxhall Road, N.W., that's in Square 1346, Lots 825
7 through 827 or rather I should say 825, 826 and 827.

8 The school has proposed to be located on
9 Lot 827. Let's see, on June 13, 2006, the Board
10 completed public testimony on the application, closed
11 the record and scheduled its decision on July 11,
12 2006. The record was open for additional supplemental
13 information. One, a narrative statement from Mr.
14 Scott Roser on the proposed storm water runoff
15 management and that was submitted and is in your case
16 file identified as Exhibit 98. Also, draft findings
17 of fact and conclusions of law. This was filed by the
18 appellant and is identified as Exhibit 99.

19 With that, I think staff is going to
20 conclude its briefing, Mr. Chairman.

21 CHAIRPERSON GRIFFIS: Good.

22 VICE CHAIR MILLER: Mr. Chairman, I was
23 unable to attend the full day hearing on this case, so
24 I'm going to not participate in the deliberations and
25 abstain on the order.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 CHAIRPERSON GRIFFIS: Not to deliberate
2 and abstain?

3 VICE CHAIR MILLER: I'm not going to
4 participate in the deliberations and I will be
5 abstaining.

6 CHAIRPERSON GRIFFIS: Okay.

7 VICE CHAIR MILLER: In fact, I will leave
8 right now.

9 CHAIRPERSON GRIFFIS: Very well. Thank
10 you for that. Let's move right into this then. An
11 awful lot of information, obviously, has come to us on
12 this case as I would say as an independent school
13 application does in special exceptions. This is of
14 particular uniqueness as we are all very well-aware
15 and I think it's critical to address at this point.

16 There are two real development types
17 happening on the property, although it did come in
18 under one application. We had some substantive
19 discussion of the importance of looking at these
20 uniquely and distinctly, not from the Zoning
21 Regulation standpoint, but I think more from a
22 procedure one, decision making, and also procedural
23 implementation of each.

24 What does that all mean? I think let's
25 breakdown the two pieces in our deliberation and look

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 at first the subdivision and development of the
2 housing and the conditions associated with that and
3 how the Board views that, and then get into the
4 educational facility and do the same likewise.

5 Let me open it up to any remarks from
6 Board Members just to set the stage for our
7 deliberation if there are any. And I would also ask,
8 as we did have Mr. Moy mention the additional
9 submissions into the record, if we had any comments on
10 those initially as we have not addressed those in the
11 public forum previously. With that, I'll open it up.

12 Very well. If there is nothing, let's
13 move ahead. As I have said, I think it is useful to
14 get into the substance and the findings of the
15 development of the housing on the lot. Although it
16 was integral to the application, as I said, I think
17 there is some critical pieces that we might want to
18 take a look at.

19 One of the pieces -- well, let's -- I
20 wouldn't mind having some address and Mr. Parsons
21 perhaps it goes directly to you and to the last
22 submission of the storm water management and I think
23 that will open up a little bit of the discussion of
24 what we will get into in the larger perspective.

25 COMMISSIONER PARSONS: Certainly. I was

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 thinking what we have been through here on Foxhall
2 Road over the past five years, first, with the Field
3 School, which is, I guess, around 10 acres, and the
4 Phillips Estate, which is 16, and this one is about
5 16.5 or 17, and how much care the Board has taken in
6 trying to assure the protection of Foundry Branch and
7 its tributaries in Glover Archibald Park.

8 In the Field School, what we did there was
9 to rely on the Park Service's approval of a plan that
10 was ultimately developed, a very cumbersome order that
11 had all kinds of conditions about the future. In
12 Phillips, we got much more specific and specified in
13 easily understood terms, if you will, 2 cubic feet a
14 second and it became what I had hoped to be the
15 standard in large projects of this kind where they are
16 adjacent to fragile resources.

17 The response of the applicant here in my
18 inquiry about 15 years storm event speaks to the issue
19 of this being a standard in the District for combined
20 sewers, implying that, at least the way I read it, the
21 Phillips' property is a combined sewer and it's not.
22 There are no combined sewers in this section of the
23 city. And it was we that did that.

24 So with all that said, I would direct our
25 attention, if it's appropriate at this time, to the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 order that has been produced by the applicant, draft
2 order, at page 44. And of course, what they have
3 done, and I agree with this by the way, is to separate
4 out the conditions for the school from the housing
5 development.

6 As you have said, if somebody paints the
7 house the wrong color, is the school liable? And I
8 think the way this order is structured separates out
9 the two. But on page 44, Item No. 12, then it talks
10 about the storm water obligation of the school. And
11 I would simply add at the bottom there where it says
12 2 cubic feet per second, it would be for the 1, 2 and
13 15 year storm events, which has become the standard in
14 the State of Maryland and hopefully will in the
15 District in the near future.

16 And that would be required also on page --
17 not required, excuse me, I would recommend that it be
18 included on page 47, which addresses the obligation to
19 the subdivision with the same language 1, 2 and 15
20 year storm events at the end of the first paragraph on
21 that page. So that's my recommendation on those two
22 issues.

23 And I have, frankly, nothing but praise
24 for the way this development has gone through its
25 process in working with the communities. It's amazing

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 how far they came and it was through a lot of hard
2 work as we saw here. And I guess this is the last big
3 parcel along Foxhall Road.

4 CHAIRPERSON GRIFFIS: Whew.

5 COMMISSIONER PARSONS: Although somebody
6 else might sell something, but anyway, I've been
7 rambling. Let me stop. Thank you.

8 CHAIRPERSON GRIFFIS: Not at all. I think
9 that frames it out very well and I'm not sure what we
10 will do with our afternoons if this is the last big
11 parcel. With that being said, I think it frames it
12 nicely, Mr. Parsons, and I appreciate you doing that
13 and I want to pick up on that last thought of how well
14 this was done.

15 I think the critical piece in starting
16 with the more technical level of the storm water
17 management, to me, frames the entire issue is how is
18 this entire parcel dealt with? And we have the
19 differing of uses that are looked at. One, the
20 educational, but 2, the housing development. And
21 there were some, I think, pertinent details to that.
22 One was the ingress and egress and one once you got
23 onto the site, how was it dealt with? How were the
24 theoretical lots accessed? How were they formed? How
25 as the site dealt with, the retaining walls, the edges

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 and that's all the theoretical lots.

2 And again, it's pertinent that it's one
3 application, but two different sets, because they deal
4 with different criteria. However, I think the
5 educational, the school deals with it incredibly well
6 also. But focusing on the housing, I think all of the
7 issue, one, with great reliance on the analysis of the
8 Office of Planning, but also on the ANC and the
9 community members.

10 There were critical aspects that were
11 required and were of great concern. One was a more
12 design criteria, a massing, an architectural typology
13 that would match or at least seamlessly integrate into
14 the area, the traffic of how it was ingressed and
15 egressed. We had talked about whether there were the
16 possibility of two or maybe more entrances into this
17 and it was pretty clear that what has been designed
18 was the most pertinent and viable option. Having,
19 one, all this put together, I think, again does show
20 great substantive and creative thought on pulling this
21 together.

22 With that, I think we can get right into,
23 from the facts of the case and the presentation and
24 also the requirements under 2516, the conditions that
25 address most of those, if it's amenable to the other

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Members. And I think the critical one, of course, is
2 that they would comply with the plans that have been
3 submitted. And I think that is what shows in evidence
4 and is persuasive of compliance with 2516.

5 We have had proffered the architectural
6 agreements, which will go to the design and
7 construction of these houses. We had some substantive
8 discussion on whether it was appropriate for us to
9 step so far into that element, and I believe that the
10 Board is correctly adopting a condition proffered by
11 the applicant, as implementing and complying with the
12 architectural agreements. It is Exhibit No. 87 in our
13 record.

14 The storm water management, which is
15 Condition 4, from the applicant, Mr. Parsons has
16 addressed. Mr. Etherly, you and I can have further
17 discussion or questions on that, if need be. I think
18 it makes some sense to rely on Mr. Parsons' expertise
19 and also in a case previous that we had this
20 discussion and I think it's appropriate to move ahead
21 with that language, if you agree.

22 BOARD MEMBER ETHERLY: No objection.

23 CHAIRPERSON GRIFFIS: Okay. Then let's
24 move ahead to the fact that we do have also a Tree
25 Preservation Plan. Also a very substantive, I think,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 aspect to an application of this nature. And it's
2 kind of one of those that I really like, because it's
3 a benefit to everybody. Meaning, the value, whether
4 it be monetarily or just visually, the value of what
5 will be done is enhanced by the retention of some of
6 the larger trees in the area and certainly that will
7 benefit everyone from those that are developing to
8 those that are actually going to be the end users.

9 So that would be a condition as listed,
10 No. 5. No. 6 goes to the development conforming to
11 the illustrative parkland edge conditions restrictions
12 marked as Record No. 93. Also, which is, I think, a
13 pertinent piece it came up, well, it comes up in all
14 the applications that we have that are adjacent to
15 other uses and certainly parklands and such, and I
16 think it's appropriate for us also to adopt that in.

17 Moving ahead, and I believe lastly then,
18 would be -- well, I think that would be it. Unless
19 there are others? Discussion?

20 COMMISSIONER PARSONS: I would move
21 approval with the recommended changes that I proposed
22 earlier.

23 BOARD MEMBER ETHERLY: Second it, Mr.
24 Chair.

25 CHAIRPERSON GRIFFIS: Excellent. Very

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 well. We do have a motion before us. It has been
2 seconded.

3 COMMISSIONER PARSONS: I should point out,
4 Mr. Chairman, that was based on the feeling that this
5 would be a full order, rather than a summary order,
6 that they have submitted.

7 CHAIRPERSON GRIFFIS: Certainly.

8 COMMISSIONER PARSONS: They submitted two
9 alternatives, but I think the full order is --

10 CHAIRPERSON GRIFFIS: Right. Yes, I don't
11 think there would be any difficulty --

12 COMMISSIONER PARSONS: Okay.

13 CHAIRPERSON GRIFFIS: -- in issuing a full
14 order, especially in terms of the timing aspect of the
15 fact that we have a submission that can be the basis
16 of which we develop our order. It should not take
17 that much time to turn it around. Okay. Anything
18 else then? Any other discussions on that first part?

19 Very well. If there's nothing further, we
20 have a motion before us. It has been seconded. I
21 would ask for all those in favor to signify by saying
22 aye.

23 ALL: Aye.

24 CHAIRPERSON GRIFFIS: And opposed?
25 Abstaining? Very well. Why don't we record the vote

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealgross.com

1 in the first?

2 MR. MOY: Yes. Yes, Mr. Chairman. On the
3 first, as you said, the vote is 3-0-1. This was on
4 the motion of Mr. Parsons to approve with the amended
5 change, seconded by Mr. Etherly, also in support the
6 Chair, Mr. Griffis. And we have Ms. Miller, who is
7 abstaining. She is participating, but abstaining from
8 voting.

9 MS. MONROE: Mr. Chairman, can I ask a
10 question? Is this motion to approve the conditions
11 for the residential portion of this or is it just to
12 include the changes that Mr. Parsons recommended? I'm
13 not quite clear. What's being approved at the moment?

14 CHAIRPERSON GRIFFIS: This is the approval
15 of special exception under 2516.

16 MS. MONROE: Okay. The whole thing.

17 CHAIRPERSON GRIFFIS: Yes.

18 MS. MONROE: Okay.

19 MR. MOY: And also following, Mr. Chair,
20 we have an absentee ballot from Mr. Mann, who votes to
21 approve with conditions as the Board may impose. So
22 that would give a final vote of 4-0-1.

23 CHAIRPERSON GRIFFIS: Excellent. Thank
24 you. Quite frankly, how we actually issue this, I
25 don't know yet, but I think it's important for us to,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 as I have said, deliberate on all of the factual
2 elements that were presented to us. And for me, it
3 breaks out fairly easily and appropriately in the way
4 we have just done it, in terms of that special
5 exception, which would move us right into the second.

6 And that is, of course, under section 206,
7 which is for the school. And walking through that, I
8 think the fact basis that Mr. Parsons has laid out
9 also for the storm water, the treatment of the
10 property, I think, is the same in terms of the
11 condition, but also the elements and the issues. And
12 I don't think that your comments of the first were
13 segregated to the first, but inclusive of the second
14 also.

15 That meaning, I think it was impressively
16 done on how the site is dealt with. One, the larger
17 portion of the lot at the bottom of the academic
18 facility that is left open, so that there is actually
19 a preserved open green space, that starts to frame and
20 actually add what I think is an excellent buffer
21 between the two different developments. But as we
22 have laid out, 206 is pretty, what, succinct, but
23 overbearing at times in terms of what we need to look
24 at, in terms of appropriateness for approval of the
25 special exception.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Basically, it can't you know, impact
2 negatively for noise or location or anything else that
3 anyone could throw at it. This seems to address all
4 the issues. Clearly, the elements of ingress/egress
5 on Foxhall is of a critical importance for those that
6 live nearby, for those that use Foxhall and for those
7 that are coming and going from the school. The
8 queuing area with the driveway that surrounds the
9 upper school, the middle school, I think, is
10 appropriate done. It was laid out for temporary
11 parking, visitor parking, but also to make sure that
12 queuing didn't happen on the Foxhall.

13 There was some discussion that there might
14 be a time on Foxhall Road, we might have some queuing
15 and I think it was appropriately addressed. So
16 dealing with the traffic elements, also it goes right
17 into the parking elements, putting the amount of below
18 grade parking. It has clearly been shown that there
19 is ample parking provided for the development of this.

20 Again, I think one could address all of
21 the elements and perhaps even have a successful
22 special exception application before the Board without
23 having such a well thought out design and site
24 utilization. And I really think it should be
25 applauded what has happened here. And we didn't get

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 too far into it, as it isn't our main stay of
2 jurisdiction in looking under 206.

3 But the way that the buildings and the
4 architectural quality and typology of the buildings,
5 the way they line Foxhall Road, I think, will be a
6 huge amenity to that drive-by and use and basically
7 the defining area of this new intersection. Likewise,
8 as the school drops and utilizes this site
9 differential and utilizing the open area for some sort
10 of amphitheater or green space, I think, is incredibly
11 intriguing and, in fact, is very appropriate for,
12 obviously, a campus feel.

13 It also centers, I think, the energy and
14 the activity, which does several things. One, it
15 controls the area of activity and noise into the
16 center of the site, which is appropriate, but I think
17 it also appropriately defines and gives a space in an
18 area that, I think, will be quite intriguing and
19 exciting to be a part of.

20 The field also, the larger field, I think,
21 utilized the grade change incredibly well. We had
22 some talk about how visitors would get there,
23 vehicular or pedestrian. I think that was somewhat
24 clarified. I think there is more clarification that
25 can come as this is actually implemented in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 development and construction how that safe pedestrian
2 passage will be met, be it from the surrounding area
3 or just from the campus itself.

4 All in all, I think that's all I need to
5 say right now. I'll open it up to others if they have
6 other additional comments on it.

7 COMMISSIONER PARSONS: Mr. Chairman, I
8 agree with everything you said. And I was pleased to
9 note in the draft order that a commitment has been
10 made to protect the Northern Dell as open space. You
11 may recall we talked about that at the hearing and the
12 applicant wasn't sure they could make such a
13 commitment until they talked to their board.
14 Apparently, that has been accomplished and that's a
15 proposed condition. So that's good news.

16 CHAIRPERSON GRIFFIS: Excellent. Yes, I
17 would absolutely agree. Very well. Let's get to the
18 conditions then that have been offered. I would note
19 that the ANC and also the Office of Planning had
20 conditions that were part of the record and,
21 obviously, we have taken some time to go through all
22 of those. Let me see if Board Members agree. I think
23 those conditions that have been proffered by the
24 applicant address or, in fact, incorporate all of the
25 critical and jurisdictional conditions that were

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 offered by the ANC.

2 I think it's most appropriate to note the
3 operating agreement of which the applicant put
4 together. They have added a Condition No. 7 in their
5 proposed order that says that they will fully
6 implement and comply with that. The operating
7 agreement, I think, or the Operation Plan, is probably
8 the most pertinent piece of evidence in the record
9 that addresses those issues and elements raised by the
10 community and the ANC.

11 Anyone disagree with that? Very well
12 then.

13 COMMISSIONER PARSONS: No.

14 CHAIRPERSON GRIFFIS: Let's move ahead
15 then. I'm going to walk down the conditions that have
16 been proffered. If there are additional conditions
17 that need to be or, obviously, others that need to be
18 made, I think it would be appropriate, too.
19 Obviously, now is the time to make those.

20 The first that is proffered is "The school
21 shall construct in accordance with the plans," and
22 marked in the record as Exhibit 94. I think that's
23 obviously critical and always a first condition. The
24 second is "The school be constructed in general
25 accordance with the illustrative plans," also a record

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 in 93 and 96.

2 And then third, "The maximum student
3 enrollment will be 440 students, maximum faculty and
4 staff is 100." Questions, changes on that?
5 Excellent. Condition 5 is something Mr. Parsons did
6 make note of and that's "Northern Dell, it is being
7 offered as Lot 826 remaining as open space." 6 is
8 "The school causing implementation of the changes to
9 the Foxhall Road right away, showing the revised
10 Foxhall Road Plan."

11 I know I kind of mumbled that, but it ends
12 with "including the southbound left turn lane,
13 northbound right turn lane to northbound through lanes
14 and the traffic signal." I think the wording of that
15 is appropriate for us to incorporate and adopt that
16 condition. And how is it appropriate? It's
17 appropriate. Well, I'm not fully convinced that it
18 is. It's that we're asking the school or we're
19 conditioning the school will implement.

20 Now, the causing to be implemented all the
21 changes on the Foxhall Road right away, my difficulty
22 is, obviously, that we're conditioning something off
23 the property line that has to do with the coordination
24 of other agencies. I think we may just need to reword
25 that a little bit, but clearly the intent is there

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 that the turn lanes and the reconfiguration of Foxhall
2 is what the school is working on having implemented.

3 Does that make sense? Okay. So I may
4 just change, but certainly the intent is not changing
5 on that. And 7, "The school should fully implement
6 and comply with the Operations Plan," which we have
7 talked about, Exhibit No. 86. 8 was "The school would
8 full implement and comply with the 6 Point Travel
9 Management Plan or TMP," as we have come to know them,
10 which is Exhibit 1 on the applicant's prehearing
11 submission. And we have it marked as Exhibit No. 35,
12 which is actually the entire prehearing submission,
13 Exhibit 35, so we may want to break that out. I may
14 make a slight adjustment on that, but I think it's
15 important to have that and the Operations Plan
16 attached to the order.

17 9 is "The school would submit its final
18 TMP to DDOT and the ANC-3D prior to opening of 1801
19 Foxhall Road Campus." 10 is "The 6 foot sidewalk
20 being constructed." 11 is "The school providing the
21 annual report of the TMP, including a report on the
22 inbound peak hour traffic count." They have indicated
23 that they would submit that to the BZA, DDOT and the
24 ANC-3D.

25 Let me just hear comments on that. We

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 have had that offered before and I don't think we have
2 ever accepted it to be submitted into the BZA. And I
3 think it's appropriate that it go to DDOT and ANC-3D.
4 And if there are difficulties or if there are
5 complications, that the three groups would get
6 together and figure out where or what should happen
7 with it.

8 I'm not sure what we would do with it if
9 it was submitted in to the Office of Zoning. Comments
10 on that?

11 COMMISSIONER PARSONS: Are you suggesting
12 BZA be deleted from this?

13 CHAIRPERSON GRIFFIS: That's correct.

14 COMMISSIONER PARSONS: I would agree.

15 CHAIRPERSON GRIFFIS: Okay. Unless there
16 is any concern on that? Clearly, the avenue for --
17 well, I'll let that go. 12 is "The school shall
18 construct a Storm Water Management Plan." We have
19 discussed that as it is close to Condition 4 on the
20 theoretical lot subdivisions under section 2516. 13
21 is "The school conforming to the illustrative parkland
22 and condition restrictions." They have wording of
23 generally conform. I think that gives them -- the
24 language, I think, is being offered to give some
25 limited flexibility to compliance with Exhibit 93. I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 don't have any difficulty with that unless others do.

2 14 is the last one. We had some limited
3 discussion on it in the hearing and it goes to phasing
4 over the course of seven years. Any discussion on
5 that? As I recall, and I think I'm correct, the point
6 is how much was actually going to be built in the
7 first couple of phases as in it, obviously, won't be
8 half of all the building, but it would be a building
9 or two that would make it operable and then the others
10 would phase in to it.

11 I don't have any difficulty with that,
12 certainly, over that time period. The fact of the
13 matter is that they would still have to build to and
14 in accordance with that which was approved, which is
15 the plan, the footprint. We have some of the
16 architectural elements or typology that is addressed
17 and as that might change a little bit, I don't think
18 that fundamentally or substantively would change the
19 approval of this.

20 I think we have also built in mechanisms
21 in terms of the TMP and the other coordination and
22 reporting. If there were elements that started to
23 become problematic, they would probably be able to be
24 addressed. So I am supportive of that condition,
25 unless there is others that feel differently?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 COMMISSIONER PARSONS: No.

2 CHAIRPERSON GRIFFIS: Excellent. Very
3 well. Is there anything else on that then?

4 COMMISSIONER PARSONS: No.

5 CHAIRPERSON GRIFFIS: Okay. If there's
6 nothing else on that, I think it's appropriate to move
7 approval of the special exception under 206 that would
8 allow for the construction of the middle and high
9 school campus for 440 students and 100 faculty/staff
10 for the property as noted as 1801 Foxhall Road, N.W.
11 This is, of course, the Friends of St. Patrick's
12 Episcopal Day School, LLC, knowing this application as
13 FOSP, and I would as for a second.

14 BOARD MEMBER ETHERLY: Second, Mr. Chair.

15 CHAIRPERSON GRIFFIS: Thank you very much,
16 Mr. Etherly. I do appreciate it. I think this is an
17 excellent culmination and perhaps we were incredibly
18 brief on our deliberation just because of the fullness
19 of the record here and I think the amount and the
20 productivity of the hearings that we went through in
21 terms of outlining and addressing all the critical
22 elements and also the facts in this case bring us to
23 this type of deliberation.

24 I think it is very supportive and again as
25 Mr. Parsons has opened up saying this is a well done

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 application, but more so than that, it's a really well
2 done development plan and I certainly look forward to
3 seeing this as it moves forward. With that, I'll open
4 it up to others.

5 If there is nothing further then, we do
6 have a motion before us. It has been seconded. I
7 would ask for all those in favor to signify by saying
8 aye.

9 ALL: Aye.

10 CHAIRPERSON GRIFFIS: And opposed?
11 Abstaining? Very well.

12 MR. MOY: Staff would record the vote as
13 3-0-1. This is on the motion of the Chair, Mr.
14 Griffis, to approve under section 206 in this case
15 with a change in the Condition No. 12 as discussed.
16 Seconded by Mr. Etherly, also in support of the motion
17 is Mr. Parsons and Ms. Miller abstaining. We have
18 also, as I said previously, a ballot, absentee ballot
19 from Mr. Mann voting to approve, so which would give
20 a final vote of 4-0-1.

21 CHAIRPERSON GRIFFIS: Excellent. Thank
22 you very much, Mr. Moy. Thank you all very much. Mr.
23 Parsons, we do appreciate it. I don't believe you
24 have any other cases with us this morning for decision
25 making, so we bid you a farewell.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 COMMISSIONER PARSONS: I hope you're able
2 to break for lunch before 5:00.

3 CHAIRPERSON GRIFFIS: Yes, indeed, indeed.
4 What will help us do that as on your way out, if you
5 see any other Zoning Commissioners out there, you
6 might invite them now to help us make further
7 decisions.

8 COMMISSIONER PARSONS: All right.

9 CHAIRPERSON GRIFFIS: That being said,
10 we're going to wait for the other Members to join us,
11 so that we actually have a quorum when we continue
12 with this. Have a very good day and we will call our
13 next case as soon as we are joined.

14 (Whereupon, at 10:30 a.m. a recess until
15 10:32 a.m.)

16 CHAIRPERSON GRIFFIS: I believe we are
17 back and full. Mr. Moy, what I would like to do is
18 just quickly as we have Mr. Turnbull with us who is
19 the Zoning Commissioner on one of the cases this
20 morning, is step out of order a little bit in our
21 chronology of the agenda and call 17484, and then we
22 will return quickly to the second case listed. And I
23 don't think we would have to disrupt the agenda again
24 for this morning.

25 MR. MOY: Yes, sir. Thank you, Mr.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Chairman. In that case, on the table is Application
2 No. 17484 of SharCon Hospitality of D.C., Inc., on
3 behalf of Sutton, LLC, pursuant to 11 DCMR 3103.2, for
4 a variance from the maximum height of buildings
5 provisions under section 840, and a variance from the
6 minimum number and size of loading berths and
7 platforms under section 2201, to construct a five
8 story Holiday Inn Express on Parcel A and a five story
9 Fairfield Inn and Suites on Parcel B in the C-M-1
10 District at premises 1917 Bladensburg Road, N.E.,
11 Square 4393, Lots 815 and 821.

12 On June 20, 2006, the Board completed
13 public testimony on the application, closed the record
14 and scheduled its decision on July 11th and the Board
15 requested supplemental information. One, well, yes,
16 was a letter, a record to be open to receive a letter
17 from the National Arboretum or the Friends of The
18 National Arboretum, and that is filed and it is in
19 your case folder identified as Exhibit 34.

20 And also and finally, we have supplemental
21 information from the applicant which responds to the
22 Board's request, in your case folder identified as
23 Exhibit 35. Staff would also conclude by saying, Mr.
24 Chairman, that in the record also is a filing from
25 DDOT, the Department of Transportation. Apparently,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 they had faxed their report to the Board. They had
2 faxed their report on June 21st, which was a day after
3 the hearing of June 20th.

4 Of course, the Office then received a hard
5 copy on June 26. So staff would say that that would
6 be a preliminary matter if you wanted to accept that
7 into the record. And staff will conclude at this
8 point, Mr. Chairman.

9 CHAIRPERSON GRIFFIS: Very well. Is there
10 any objection to taking or accepting that into the
11 record? Not noting any objection, we can do that.
12 I'm sorry, Mr. Moy, did you say what exhibit number it
13 was?

14 MR. MOY: If I didn't, it's Exhibit 33.

15 CHAIRPERSON GRIFFIS: Perfect. Thank you
16 very much. Okay. Let's move ahead. Mr. Moy had
17 indicated, I think appropriately and correctly, that
18 we had asked for additional information that was
19 submitted. Obviously, we're of concern of hearing
20 from the National Arboretum, which was the abutting
21 property to this application. Regretfully, it wasn't
22 as definitive as one might have wanted, either in
23 support or in opposition, but they were affirmatively
24 noncommittal.

25 That being said, we can move ahead with

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 our responsibilities. Putting it into some frame,
2 obviously, we're here for variances. And the
3 variances, I can say generally speaking are supported,
4 both from the Office of Planning, the surrounding
5 community and the ANC. There is one, obviously, issue
6 of the height, which is under section 840, if I'm
7 correct, that the Office of Planning has some concern
8 and, in fact, did not support.

9 There was, I thought, a very fruitful
10 Public Hearing on this starting from the very
11 beginning of understanding the site itself and the
12 grades and what was being proposed. The other
13 additional information that we had asked for is how
14 the grade was going to be dealt with in terms of the
15 retaining walls and also clarification of ingress and
16 egress. And why is that pertinent?

17 Well, obviously, it goes to what the
18 uniqueness of the site is, which is twofold as
19 purported by the applicant. One is the size of it.
20 The other, however, is how much frontage there is.
21 How you get in and how you get out. The other aspect
22 is how it is balanced from the FAR allowable in the C-
23 M-1 Zone to that of the lot occupancy to that of the
24 use that's being proposed here. All of which, I
25 think, are a confluence of elements that go to the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 uniqueness that also rise out of the practical
2 difficulty.

3 If we look at it in terms of trying to
4 achieve as they have purported the full density or
5 rather the full FAR on this site, it would be near
6 impossible and it certainly would not be in the
7 footprint that would be appropriate for this type of
8 use, that is of a hotel. Meaning, it would be very
9 deep. You know, it could be, you know, 100 feet wide
10 and one story and it would start to fill, but even
11 then wouldn't fill out the entire FAR.

12 As it's proposed, if I recall and my notes
13 are correct, we have a proposed below 1 FAR. It's
14 about a .9. An allowable is 3. Clearly, we're not
15 having major impact on that that is controlled by the
16 Zoning Regulations. That is the building mass impact
17 on the surrounding areas.

18 There's a couple of other unique, I think,
19 aspects that were addressed, but maybe not, well, that
20 I think are strong elements that were brought up. The
21 location of this, the intersection, the surrounding
22 area, which doesn't have so much pertinence, but from
23 the New York Avenue corridor, it lends itself to a
24 very, what, unique street front line. I thought it
25 was incredibly informative of the study that was put

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 into by the applicant, the rendering. And actually,
2 I just had it. Oh, yes.

3 It's Exhibit F of the applicant's
4 prehearing submission. And it shows how Bladensburg
5 Road and the whole intersection could be redone to be,
6 what I think is coming to be more of a kind of, an
7 urban intersection. I mean, a high volume urban, but
8 certainly more urban as opposed to what it is now,
9 which is really, what, a barrage of signage. It kind
10 of -- well, there it is.

11 Interesting photographs that show it.
12 It's much more of a, you know, high speed commuter
13 area, not a lot of identity, not a lot of real place
14 making that's happening there. And why is that so
15 pertinent to this? Well, I think it does speak
16 directly to the uniqueness and the value of this
17 corner and this intersection how one addresses that.
18 And the fact that they don't control the corner, the
19 actual corner, but rather surroundings of the corner,
20 which helps look beyond all the practical difficulties
21 in terms of the requested relief as we move forward.

22 And the one that I think needs most
23 addressed, I mean, certainly the loading berth, the
24 platforms, all those have been talked about and how we
25 will have some sharing, but also the layout of how

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 these buildings are going to be served. I think those
2 are fairly straightforward.

3 The height comes down to the issue again
4 and I would go back to all those elements and the fact
5 that by having to park the required amount of parking,
6 you have to provide a certain amount of the surface.
7 One, from the egress in and out, the second is,
8 obviously, the actual parking spaces. Once you start
9 looking at the appropriateness of the footprint of a
10 hotel or more of a residential dynamic and program, I
11 think you see that it's practically difficult in
12 complying with the strict height.

13 And if this was, I think this would give
14 much more concern, starting to break all sorts of
15 other elements of the regulations. You know, if we
16 were way out of scale in terms of the allowable FAR or
17 the lot occupancy or anything else of that nature, but
18 it seems to be fairly straightforward in terms of this
19 one element.

20 I wasn't so persuaded that, let's call it,
21 the franchise can't do a story less. I understand the
22 economies of doing anything like this. But I think
23 that the site itself lends to the practical difficulty
24 with the parameters of the C-M-1 zoning that support
25 the variance for the height. You know, what's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 interesting is the surrounding area is a different
2 zone, but that may not be critical to us, but it
3 certainly is well worth noting.

4 That's enough from me at this point. I'll
5 open it up to others if they have comments.

6 VICE CHAIR MILLER: I'm looking at this in
7 terms of the elements for the variance. I think that
8 it's a strong case here, that there is a confluence of
9 factors that create exceptional conditions for this
10 property, whereby the strict application of the Zoning
11 Regulations would create a practical difficulty upon
12 the owner. And you touched upon a lot, I think, the
13 constraints of the property, the footprint in which
14 they have to build the hotel.

15 But so I want to address the other
16 constraints, which I think are unique, and that is
17 that there is a hotel there now and there has been a
18 hotel there operating for over 50 years. And over
19 that time, we heard testimony at the hearing that
20 there has been a great change in the industry,
21 particularly since 1958 where they can't replace the
22 present hotel, which they characterize as a type of
23 motel, with the same kind of structure.

24 And in order to have a viable hotel, they
25 have to go to a franchise type of hotel for this area.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 And the franchises have certain requirements that just
2 could not fit into the footprints without the variance
3 relief. And I think they put in a lot of testimony as
4 to why they had to use a franchise. It's on New York
5 Avenue and they needed the reservation system of a
6 franchise, that they needed the name recognition, that
7 they can't just put any type of hotel there for it to
8 be economically viable.

9 And because of grade changes and
10 narrowness of entrance ways and things like that, they
11 had to get the height variance. So I think that they
12 made a very strong case for that. But if we were to
13 deny the variance, then they would not be able to have
14 a hotel use there and they have had a hotel use there
15 for 50 years. So I think that makes that particular
16 site unique.

17 And so it seems to me the practical
18 difficulty, if the regulations were strictly applied,
19 would be that they would go out of business, that
20 there wouldn't be allowed to be a hotel there. And OP
21 seemed to be looking at the exceptional conditions, I
22 think, too narrowly. I think they were just looking
23 at the topographical conditions saying that well, you
24 couldn't put a hotel, a franchise like this in the C-2
25 Zone anywhere without a variance.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 And if that's the case, then I think what
2 makes this particular site different is that they have
3 had one there for all these years and as they said,
4 they were there for the sweat and the pain and they
5 should be there for the revitalization.

6 No substantial detriment to the public was
7 identified. Hotel use is an allowable use in that
8 zone. We also heard testimony that it does serve a
9 public need for this type of moderately priced hotel.
10 There was the public benefits of jobs that would come
11 in with the franchise. The ANC supported the
12 variance. I recall in the transcript they said they
13 couldn't understand what OP was trying to protect.

14 And in fact, OP was really just asking for
15 a different type of process, so that maybe they should
16 go for a PUD, but there really wasn't, to me, any
17 convincing reason why that would be preferable. So
18 there was no substantial detriment to adjacent
19 properties. I think it was significant that the
20 Arboretum, although they didn't take a position, they
21 did indicate in writing that they were on notice about
22 the application and had seen the documents and didn't
23 choose to oppose it, in any event.

24 I think that covers it for me.

25 CHAIRPERSON GRIFFIS: Excellent. Thank

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 you. And there was testimony in the record about how
2 this wouldn't be visible from the Arboretum. I mean,
3 obviously, we didn't have any graphic documentation of
4 that, but that wasn't refuted whether that's
5 absolutely definitively correct or not.

6 One last piece of factual evidence that
7 was presented is that the fire department had required
8 that the drive aisles be larger than the actual zoning
9 requirements. I wasn't sure how that actually fit
10 into all of the elements. It obviously fits into the
11 footprint and that footprint then goes to how well do
12 you mass it? Meaning, so if it kind of squeezes in,
13 then it goes up.

14 But there wasn't the strongest case made
15 that that was the direct impact. But I think it does
16 add to the level of all the factors that are put forth
17 in this. Yes?

18 VICE CHAIR MILLER: I just want to say
19 that I also think that it wasn't a question, I don't
20 think, of realizing the FAR potential. I think it is
21 a question of just being able to comply with the
22 requirements of the franchise and being able to put a
23 hotel there that meets the modern day requirements.

24 CHAIRPERSON GRIFFIS: Good. I think
25 that's excellent clarification of that fact. I think

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 that does put into perspective of how we're looking at
2 the entire volume or massing on the site when we
3 compare it to the allowable FAR and then the actual
4 FAR being proposed. But you are absolutely right.
5 This wasn't about the case being made that look we
6 really got to maximize our FAR.

7 Okay. Others? Yes, Mr. Turnbull?

8 COMMISSIONER TURNBULL: Yes, thank you,
9 Mr. Chairman. I have no problems with granting a
10 variance on this project. I think that in looking at
11 the project the way it's proposed, I think that the
12 architecture of the project is fairly benign. These
13 are ubiquitous structures that in various forms we
14 have seen all over the country.

15 I think there is a recognition involved
16 with these projects and I think as Ms. Miller said,
17 you know, this site has been a hotel use and that this
18 is, obviously, an opportunity, I think it affords an
19 opportunity, to create an upgrade in hotels, still at
20 a moderate price for people coming into the area. And
21 I think that some of the comments that OP had
22 regarding the site, I think that this was a creative
23 function trying to bring hotels, a better use of hotel
24 into the area. And I think that some of their
25 concerns are maybe a little bit over the edge.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 And I really don't think that -- I mean,
2 some of their concerns about whether the hotels are
3 sold in the future and creating a physical barrier, I
4 think creating a physical barrier would probably cause
5 more of a problem to the whole site in the future.
6 And I really don't think that, at this point in time,
7 that's really an issue.

8 The other thing, in looking at some of
9 their comments, the shared loading, I mean, they are
10 simply asking for a clarification on the plans. I
11 think that's easily addressed. I don't think that
12 that's an issue and I think that we have gone through
13 that before at the hearing, that that seems to satisfy
14 the needs of both hotels. DDOT is okay with that. I
15 don't think the see an impact with any -- with that
16 kind of a use.

17 I guess the only thing that I see that are
18 maybe issues that need to be clarified is OP's concern
19 about the clarification of the Great Room, the
20 Breakfast Room and whether these rooms constitute a
21 function room and as such then would need additional
22 parking. I'm not sure how much of an issue that is or
23 not. The only thing that I have, and I think when we
24 talked about it in the hearing, and I think they have
25 satisfied it for the most part, we had the property

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 line issue with the existing gas station to the
2 northwest there.

3 And I think that we had asked that -- it
4 sounded at the time of the hearing that they were
5 going to remove the wall totally and we had concerns
6 about the grading and water retention on their site.
7 It looks like from the site plan that was received on
8 this, sheet 5 of 6, sort of shows that actually they
9 were -- well, 5 of 6 shows the overall site plan. But
10 on, I guess it's -- one of them, one of their site
11 plans shows actually that they are putting new walls
12 in. And then they are also cutting down the existing
13 wall.

14 So it sounds like they are still retaining
15 a retaining wall on the site and then having their
16 grades meet it and still come back. On sheet 5 of 6,
17 the only thing that I noticed is that it says off-site
18 grading easement required. So that might be the only
19 question that we would have to address or whether
20 that's -- maybe that's not an issue for us. But other
21 than that, I think they have tried to address the
22 issues that we talked about.

23 I think that again it is an appropriate
24 use for the site and I think that we should grant the
25 variance.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

CHAIRPERSON GRIFFIS: Excellent. Well said. Just for clarification, it's affront of those numbered sheets. It's actually sheet 2 of 3 site plan that shows the detail of the retaining walls, the two portions flanking as new retaining walls, the others being saw cut and that's an excellent point to bring up, because I think this is actually what we had thought would have to happen and now graphically is being shown.

Likewise, in your comment in terms of the off-site grading easement required, I don't think that is a zoning issue that we need to address. Obviously, they will have to deal with that as needed if there are other approvals or agency reviews required for that. Very well.

VICE CHAIR MILLER: I just would like to note that the applicant at the hearing did agree to provide an easement on the property, so the record could reflect that or the order.

CHAIRPERSON GRIFFIS: Provide a what?

VICE CHAIR MILLER: An easement to share the loading berths and facilities.

CHAIRPERSON GRIFFIS: Oh, okay. Right. Good. The other issue Mr. Moore brought up was the fact of the assembly spaces and I think we addressed

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 that to everyone's satisfaction, but we'll hear if
2 not. The fact that it was an accessory use, it was
3 the Breakfast Room and that was part and parcel of
4 what was being done, that that would not actually
5 invoke additional parking as required in our
6 regulations, as the rooms do not fit the definition of
7 what is being addressed, unless there's other opinions
8 on that?

9 BOARD MEMBER ETHERLY: No, that is
10 correct, Mr. Chair. It was specifically asked of the
11 applicant regarding the plans for the usage of that
12 space and the applicant indicated that it's very
13 straightforward non-program space.

14 CHAIRPERSON GRIFFIS: Excellent. Thank
15 you. Others then? Anything else?

16 VICE CHAIR MILLER: I just want to add
17 that I think that the applicant really made an
18 excellent and strong case at the hearing about all the
19 efforts that they made to try to comply with the
20 height requirements, in particular, and that it just
21 would not work with the requirements of the franchise
22 and the constraints of the property.

23 CHAIRPERSON GRIFFIS: Thank you. That's
24 a very good point. There is two cases on today, as my
25 mind runs through the rest of the agenda, that that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 comment is pertinent for and that is the fact that the
2 Public Hearing, the case presentation really pulled it
3 all together and I think it was very strong, this
4 being one of them. Perhaps I'll remember to address
5 the other one also.

6 But you are absolutely correct. And
7 that's what I think is so critical about having Public
8 Hearings on this in order to be able to be able to ask
9 questions and get them answered, but also the
10 additional information and how that information is
11 presented and I think, as you say, it was very
12 substantive and persuasive Public Hearing on this.

13 Very well. Is there anything else? Any
14 other comments? Then I think it's appropriate to
15 continue our deliberation under a motion and I would
16 move approval of Application 17484 and that would be
17 the SharCon Hospitality of D.C., Inc. on behalf of
18 Sutton, LLC for the variances from the maximum height
19 of the building provision under 840, and also the
20 variance from the minimum number and side of loading
21 berth and platforms under section 2201, which would
22 allow for the construction of the five story Holiday
23 Inn Express on Parcel A and a five story Fairfield Inn
24 and Suites on Parcel B, premises 1917 Bladensburg
25 Road, N.E., and would ask for a second.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 VICE CHAIR MILLER: Second.

2 CHAIRPERSON GRIFFIS: Thank you very much,
3 Ms. Miller. I think we have addressed all the
4 elements and the facts of making the variance case in
5 terms of the uniqueness and practical difficulty,
6 whether it would impair the intent and integrity of
7 the Zone Plan or Map and whether it would impair the
8 public good.

9 In terms of the Zone Plan and Map, and I
10 think that's where we briefly went to in terms of
11 talking about the surrounding area and the surrounding
12 zone districts, we have a pocket of a C-M-1, which to
13 me is I'll digress and give a personal opinion of I
14 would have no idea what C-M-1 is useful for, in the
15 city.

16 With that being said, we have a pocket of
17 C-M-1 on this, what could be, I think, a very
18 important and critical gateway entrance corner. The
19 surrounding areas reign from, you know, Government to
20 C-5 to the C-M-2, which allows for a substantial
21 amount of height. There is an adjacent building, I
22 believe, it is 75 feet high, which was talked about,
23 and also pictured into it.

24 Would this granting of the additional
25 limited height variance be detrimental to the Zone

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Plan, with what was actually happening, I think,
2 absolutely not. In fact, that's what I found an
3 additional aspect of importance of the graphic kind of
4 comprehensive or concept plan from DDOT showing the
5 fact that this wouldn't, in fact, impair, but may, in
6 fact, support that larger Zone Plan and projected
7 future look or utilization of the area.

8 And Ms. Miller, I think, raised or really
9 addressed some excellent points of how the public good
10 is served in the granting of this variance, so it
11 certainly has not been evidenced that it would in any
12 way be detrimental. I'll open it up to others. Ms.
13 Miller?

14 VICE CHAIR MILLER: I think we have spent
15 a lot of time talking about the height variance,
16 because that was the most controversial and that OP
17 opposed it. I just want to cover briefly the variance
18 for the loading requirements. I think that he
19 exceptional condition is that there is an irregular
20 shape of the property with a steep slope and that
21 there is limited space for the loading due to the
22 parking requirements of the franchise and our parking
23 requirements.

24 So the practical difficulty is there is
25 not enough space left to meet the loading requirements

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 and there is no substantial detriment, because it was
2 found that those requirements weren't necessary. They
3 didn't need such a large space and that it wouldn't
4 negatively impact any of the adjacent properties by
5 having the smaller berth and sharing.

6 CHAIRPERSON GRIFFIS: Excellent. Others?
7 Anything else then? If there's nothing else, we do
8 have a motion before us. It has been seconded. I
9 would ask for all those in favor to signify by saying
10 aye.

11 ALL: Aye.

12 CHAIRPERSON GRIFFIS: And opposed?
13 Abstaining? Very well. Let's record the vote.

14 MR. MOY: Yes, sir, Mr. Chairman, the
15 staff would record the vote as 4-0-0. This is on the
16 motion of the Chairman to approve the application,
17 seconded by Ms. Miller, in support of the motion, Mr.
18 Etherly and Mr. Turnbull. We also have an absentee
19 ballot from Mr. Mann, who participated on the
20 application and his vote is to deny the application,
21 so that will give a resulting vote of 4-1-0.

22 CHAIRPERSON GRIFFIS: Excellent. Is there
23 any notes on his vote to deny, Mr. Moy?

24 MR. MOY: No, sir.

25 CHAIRPERSON GRIFFIS: No comments?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. MOY: No comments at all.

2 CHAIRPERSON GRIFFIS: Very well. Not
3 noting if there -- what was in his mind, I think we
4 can just for the record, what? I wouldn't mind
5 addressing what Mr. Mann's concern is. I perceived
6 them in the hearing was the adjacent -- the
7 Arboretum's opinion on this and I imagine, it's
8 totally my projection of why he might vote to deny,
9 but I think it's a critical point in a vote that isn't
10 in accordance with the majority of the Board to at
11 least put down my thoughts on what that might have
12 been.

13 And perhaps it is that it wasn't so
14 definitive the adjacent Arboretum's opinion or review
15 of this that maybe raised some concern. Again, that's
16 totally my conjecture, but it's an interesting vote
17 nonetheless. Very well. So the final vote is?

18 MR. MOY: The final vote is 4-1-0. Would
19 the Board care for a full order or a summary order,
20 sir?

21 CHAIRPERSON GRIFFIS: Is there an opinion?
22 I don't see any reason why we wouldn't waive our rules
23 and regulations and issue a summary order on this,
24 unless there's concern from the Board Members that we
25 do a full order? Very well. If there's no concern,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 why don't we issue a summary order on this?

2 MR. MOY: Thank you, sir.

3 CHAIRPERSON GRIFFIS: Thank you. Why
4 don't we move ahead then and call 17477?

5 MR. MOY: Application No. 17477 of Lillian
6 K.H. Audette Revocable Trust, pursuant to 11 DCMR
7 3103.2, for a variance to permit the location of a
8 parking space, serving a single-family dwelling, in
9 the front yard under subsection 2116.2, in the R-3
10 District at premises 2407 37th Street, N.W., that's in
11 Square 1300, Lot 327.

12 On June 6, 2006, the Board convened its
13 Public Meeting session. After deliberation the Board
14 decided to reopen the record for additional
15 information before it could make its decision on July
16 11th. The applicant has filed as requested and that
17 document is in your case folders identified as Exhibit
18 31. And with that, that concludes the staff's
19 briefing, Mr. Chairman.

20 CHAIRPERSON GRIFFIS: Excellent. Thank
21 you very much, Mr. Moy. I do appreciate it. And
22 let's get into this. As we had asked for little
23 additional information, we have received that
24 information. I think it was critical and to me some
25 of the most pertinent were the photographs and the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 narrative and the description of the surrounding area,
2 which I think as I had said in the last case, I think
3 this one was also very persuasive in the Public
4 Hearing in terms of how the evidence was addressed and
5 presented.

6 Stepping back, I think we started a little
7 bit talking about this, but I will reiterate myself.
8 I have a strong visceral reaction when one talks about
9 parking in front of residences. The regulations seem
10 to be fairly straightforward on it. But then as you
11 start to look at the specifics and those specifics
12 lead you back to the general, you realize that there
13 are points of which is it appropriate.

14 In the lower residential zones, there are
15 ones, there are twos where you have large residential
16 buildings and frontages and you have circular drives,
17 you know. This case it's interesting. How do I say?
18 It shouldn't take as much time and thought as I have
19 given it, although it set off so many different
20 thoughts and, I think, critical aspects of how we deal
21 with this particular issue.

22 What does that mean? It means there is a
23 few cases and I think cases do this, but especially to
24 me, that make you look at the city differently or make
25 you drive around or walk around and see things that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 you may not have noticed specifically. This is one of
2 those. And then how many times now that I have
3 counted up and gone down entire stretches of areas
4 where people are actually parking in front and some
5 are very appropriately so, others not so.

6 But let's get right into this case and not
7 take up everyone's time with my ramblings. The
8 critical piece to this is the variance from 2116.2.
9 This is in an R-3 District. The uniqueness of this is
10 the fact that this R-3 is like a small island. There
11 is two, I think, critical unique and practical
12 difficulties that arise out of that.

13 One of the uniqueness is it's surrounded
14 by the commercial zone and the commercial uses. The
15 other is twofold. There is no alley servicing this
16 structure. And also the diminished size, rather the
17 triangle aspect from Wisconsin Avenue to 37th Street.
18 Each of those talk to me about access, availability of
19 ingress and egress and also availability of parking
20 when you start looking at this. And it was noted
21 several times through, that this is the only single-
22 family in the square and perhaps across the street
23 also that does not have the availability of parking.

24 I believe that the practical difficulty in
25 complying with this particular section has been fairly

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 persuasive. I don't think, and I think that it is
2 probably more so on other cases that we have had
3 somewhat similar to this, anyone has been exact, but
4 that doesn't matter. The point being that I think one
5 could get hung up on how this wouldn't impair the
6 integrity of the Zone Plan and Map.

7 I mean, how does this not fundamentally
8 change the zone in which it is located in, the R-3,
9 and I think this one does not, based on the fact of
10 its uniqueness of character, its placement and that of
11 the surrounding areas. I'm going to let it go at that
12 for the moment and open it up to others for their
13 comments. Yes?

14 VICE CHAIR MILLER: Okay. I don't think
15 it's too infrequent that an applicant seeks to put a
16 parking spot on the front yard, because parking is so
17 difficult in the city. And I think that we,
18 therefore, need to be very careful, you know, in
19 identifying a situation as unique or exceptional and
20 that there are real practical difficulties. And I
21 think again, in this case, that over the course of
22 this proceeding, the applicant did a very good case in
23 showing how this particular property does have
24 exceptional conditions.

25 And you stated it's the only single-family

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 dwelling house on the block without parking. So we
2 don't have a situation where all the neighbors are
3 going to come in and say I want to put parking in my
4 front yard. And I think it is an unusual situation
5 where it's located near the convergence of 37th Street
6 and Wisconsin Avenue, and it backs up to commercial
7 property.

8 The applicant identified that there were
9 31 commercial uses within a two block radius of the
10 property and it is only 26 feet from commercial uses
11 to the north on 37th Street. So there is a strong
12 demand from the commercial properties for parking that
13 flows onto this street. Oh, I think they also
14 identified that these commercial uses, the 31
15 commercial uses also don't have their own dedicated
16 parking. So there is a big demand for parking here.

17 I was looking at the test, you know, it
18 says that if there are unique or exceptional
19 conditions and that because of that, the strict
20 application of the Zoning Regulations would create
21 practical difficulties upon the owner. So the
22 practical difficulties that are created for this owner
23 is in parking. And I don't think you have to read the
24 regulation that they can't comply with our
25 regulations, because they can comply with the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 regulations.

2 There's no regulations that require them
3 to have parking. But I don't think that that's the
4 way the practical difficulty test is read. I think
5 the practical difficulty test is read that because of
6 the strict application of the Zoning Regulations, they
7 are experiencing practical difficulties and I think
8 they made a case for that. And that there is no
9 substantial detriment to the public, which is the last
10 test. They are going to have a curb cut that would
11 remove one spot from the public, but the driveway will
12 be creating room for two parking spaces. So they may
13 be taking one car off the public space.

14 And then the other aspect of this was the
15 aesthetics. I was asking the Office of Planning well,
16 what do they think the rationale was for this
17 regulation? And one of it was aesthetics, that it's
18 not too attractive usually to have parking in the
19 front. However, they presented a landscaping plan and
20 elevations showing that they were going to partially
21 screen the parking area with retaining walls, flower
22 boxes and planters.

23 And if you look at this property in the
24 context of where it is, which is a transitional area
25 with other commercial properties right nearby that, in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 fact, this does not take away from the aesthetics of
2 the area. So I think it does meet that test and the
3 ANC also supports this. The neighbors support it. So
4 we didn't get any evidence of any adverse impacts.

5 Those are my comments for now.

6 CHAIRPERSON GRIFFIS: Excellent.

7 VICE CHAIR MILLER: And OP supports this.

8 CHAIRPERSON GRIFFIS: Yes.

9 VICE CHAIR MILLER: They didn't find
10 anything that would, you know, hurt the integrity of
11 the Zone Plan or anything of that matter.

12 CHAIRPERSON GRIFFIS: Very well. And
13 that's a pertinent point that we're not looking at
14 providing the required parking, but even the location
15 of parking is addressed in the regulations and I think
16 you have addressed that very well. And it's good that
17 you brought up the fact that the ANC-3B did support
18 this application. Others?

19 BOARD MEMBER ETHERLY: Thank you. Thank
20 you very much, Mr. Chair. This is a very difficult
21 case for me, because I agree wholeheartedly with
22 everything that my colleagues have said. The
23 applicants are endeavoring to address something that
24 is most certainly more than just a simple
25 inconvenience.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 My concern, however, is that 2116.2 is
2 fairly clear in its terms as it deals with the issue
3 of residentially zoned areas. This isn't a set of
4 circumstances that we see frequently. To the best of
5 my recollection, there has been only one other case
6 where we have dealt with this issue and the outcome
7 there was not a favorable one as related to the
8 property owner.

9 There is no lack of documentation, both in
10 this application and then just generally speaking from
11 empirical data that parking is a nightmare in this
12 city in many, many communities. And I think the
13 characteristics that have been highlighted with regard
14 to this particular property are somewhat instructive
15 in looking at it. But again, I think, 2116.2 is
16 fairly clear and it was perhaps helpful to, on behalf
17 of my colleague, Mrs. Miller, toss that question to
18 the Office of Planning with regard to why this
19 particular regulation is in place.

20 I think it does perhaps merit a look as we
21 deal with some of our residential communities,
22 especially those that are in "transitional areas," but
23 my concern with moving forward favorably on this
24 application it not so much the issue of creating a
25 precedent that might be pursued by others, clearly the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 majority of properties in this particular area already
2 have parking available to them.

3 So I'm very clear that there's not going
4 to be some ground swell, if you will, of other
5 applications. But 2116.2 is in place for a reason and
6 I think that reason is still somewhat applicable as we
7 deal with the Zoning Regulations and the issue of, as
8 the Chair indicated at the top of his remarks, looking
9 at cars in front yards. So I'm still struggling with
10 that. As we have gone into deliberation, I haven't
11 necessarily heard anything to sway me.

12 Again, that's entirely understanding all
13 of the steps that the applicant has taken and will
14 undertake to mitigate any impacts from an
15 architectural or I should say more so an aesthetic
16 standpoint on the curb cut here. That's where I'm at,
17 Mr. Chair. Thank you.

18 CHAIRPERSON GRIFFIS: Excellent. Thank
19 you very much. I tend to agree with you that this
20 may, if we were going in this direction, require a
21 relook at this section of the regulations that go to
22 location of parking, especially for, as I indicated,
23 the most restrictive residential zones, the R-1s, the
24 R-2s, where we have a larger lot size requirement.
25 The R-3s and the R-4s starts getting into the row

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 dwellings which I think you are raising an interesting
2 point of concern of what that would do in terms of
3 impact.

4 It's not uncommon that not all Board
5 Members would be in conjunction with their view of the
6 facts of the case and their deliberation. And I think
7 it's appropriately so. Very well. Other comments?
8 I don't think we need to belabor this any further
9 then. I think an awful lot has been addressed. I
10 think to summarize the last pieces, because Mr.
11 Etherly and Ms. Miller both brought it up, we did have
12 the additional submissions, which I think are critical
13 and that is what is being proposed to be constructed
14 and that is talking about the location and the size.

15 One of the pieces also that the agencies
16 were requesting via condition be the 15 foot, no
17 larger than 15 foot curb cut, I think, and that is
18 showing on the plans. So obviously, this was
19 positively -- if this was approved, that would be one
20 of the first conditions that it would be built in
21 accordance with the plans. I think if that could be
22 even diminished from 15, it would probably be even
23 better. But the point being it was only going to take
24 away limited street parking and provide for that
25 private parking.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Others? Anything else? All right. Why
2 don't we continue then with deliberation under a
3 motion? And I would move approval of Application
4 17477 of the Lillian K.H. Audette Revocable Trust that
5 is for the variance to permit the location of a
6 parking space, which, of course, as we have said, is
7 different than the required parking space location.
8 The location of a parking space for a single-family
9 dwelling in the front yard subsection 2116.2 at
10 premises 2407 37th Street, N.W., and I would ask for
11 a second.

12 VICE CHAIR MILLER: Second.

13 CHAIRPERSON GRIFFIS: Thank you very much,
14 Ms. Miller. I'll open it up for other further factual
15 statements, deliberations, concerns, comments? If
16 there is nothing further, I believe we should move
17 ahead then. We have a motion before us. It has been
18 seconded. Let me ask for all those in favor to
19 signify by saying aye.

20 VICE CHAIR MILLER: Aye.

21 CHAIRPERSON GRIFFIS: Aye.

22 CHAIRPERSON GRIFFIS: And opposed?

23 BOARD MEMBER ETHERLY: Opposed.

24 CHAIRPERSON GRIFFIS: Excellent. Thank
25 you very much. Mr. Moy, would you record the vote?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. MOY: Yes, sir. Staff would record
2 the vote as 2-1-0. This is on the motion of the Chair
3 to approve the application, seconded by Ms. Miller.
4 Mr. Etherly is opposed to the motion. We have two
5 absentee ballots, Mr. Chairman. One is from Mr. Mann
6 and his vote is to approve the application. And the
7 second absentee ballot is from Mr. Hood, who also
8 participated on the case, and his vote is to deny the
9 application. So that will give a final vote of 3-2-0.

10 CHAIRPERSON GRIFFIS: Very well then. The
11 motion carries.

12 MR. MOY: That's correct, sir.

13 CHAIRPERSON GRIFFIS: Okay. Thank you
14 very much, Mr. Moy. Thank you all very much. Mr.
15 Etherly, excellent notes of comment on the
16 application. Let's move ahead then and I think that
17 we can --

18 MR. MOY: Mr. Chairman?

19 CHAIRPERSON GRIFFIS: Yes?

20 MR. MOY: Again, full order, summary
21 order?

22 CHAIRPERSON GRIFFIS: That's what we're
23 figuring out here.

24 MR. MOY: Okay. All right. I'm sorry.

25 CHAIRPERSON GRIFFIS: Ms. Miller had

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 indicated, perhaps off the record, that appropriate so
2 we had a proposed order submitted and she is of the
3 opinion, I won't speak for her, but I'll say what I
4 think she just said, and it was an excellent order.
5 In all seriousness, I think we can issue a full order
6 on this. It will be expedited and I think it's
7 appropriate with the vote the way it did on the Board.
8 We can utilize, obviously, as our basis of the
9 issuance of the order of that which is provided by the
10 applicant's representation or representative.

11 So we'll issue a full order on that.

12 MR. MOY: Very good.

13 CHAIRPERSON GRIFFIS: Good. Anything else
14 on this case?

15 MR. MOY: No, sir.

16 CHAIRPERSON GRIFFIS: Excellent. Thank
17 you all very much then. Thank you. Have a great day.
18 Let's move ahead.

19 MR. MOY: The next case then is
20 Application No. 17495 of Douglas George Jefferies,
21 pursuant to 11 DCMR 3103.2, for a variance from the
22 penthouse setback provisions under subsection
23 400.7(b), a variance from the lot area requirements
24 under section 401, a variance from the lot occupancy
25 requirements under section 403, a variance from the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 rear yard requirements under section 404, a variance
2 from the side yard requirements under section 405, a
3 variance from the open court requirements under
4 section 406, a variance from the nonconforming
5 structure provisions under subsection 2001.3, and
6 variances from the alley width and alley structure
7 height provisions under subsections 2507.2 and 2507.4,
8 to allow the conversion of two existing single-family
9 dwellings into one single-family dwelling in the R-3
10 District at premises 1520 22nd Street, N.W., and 2210
11 Q Street, N.W., in Square 2510, Lots 806 and 813.

12 On June 27, 2006, the Board completed
13 public testimony, closed the record and scheduled its
14 decision on July 11th. The Board requested additional
15 supplemental information, primarily the applicant's
16 closing remarks, to consider amending the advertised
17 relief to include relief from section 2507.3 and to
18 address the practical difficulty test of the variance
19 relief.

20 That filing was submitted into the record
21 dated July 6, 2006, identified in your case folders as
22 Exhibit 37 and also a follow-up to that filing on July
23 10, 2006, which should be Exhibit No. 38. Both of
24 these two documents are not timely, being that the
25 deadline for submission was July the 5th. And staff

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 will conclude here, Mr. Chairman.

2 CHAIRPERSON GRIFFIS: Okay. Let me just
3 do this, let's take just a five minute break, somewhat
4 substantive on this case, but also, as has just been
5 noted to me, that we have a Zoning Commissioner that
6 participated on this case that has sent in other
7 information on other cases and we haven't heard from
8 this one.

9 So we just want to verify that perhaps she
10 is on her way down, which would be very relevant for
11 us to continue with her presence or figure out how she
12 is going to participate. So we'll be back in five
13 minutes.

14 (Whereupon, at 11:21 a.m. a recess until
15 11:56 a.m.)

16 CHAIRPERSON GRIFFIS: Very well. Let's
17 reconvene. As we have called the case before us now,
18 Mr. Moy, I believe you have other exhibits that need
19 to be dealt with at this time.

20 MR. MOY: Yes, sir, Mr. Chairman. I would
21 also like to add for the record that the Office has
22 also received a posthearing document after the hearing
23 on June 27th from a neighbor, a letter filed in
24 support which is in the case record identified as
25 Exhibit 36.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 I mention this because the Office received
2 this letter, although the letter was dated June 26th,
3 which was before the hearing of the 27th, however, the
4 Office actually didn't receive it until June 29th, so
5 that that would be received after the record had been
6 closed.

7 CHAIRPERSON GRIFFIS: Okay. I don't see
8 any reason why we couldn't open the record and accept
9 all of the exhibits. At this time I will hear from
10 others if they have any objections. Not noting any
11 objections, let's move ahead. Unfortunately on this
12 case, we're going to need to postpone our decision
13 until next week which would be calling for a Special
14 Public Meeting on the 18th of July. We'll put this on
15 the agenda. It will be the only decision for that
16 day.

17 It's unfortunate to do this. However, it
18 is my opinion that we're going to need all five
19 Members participating on this for a full vote and
20 deliberation. We could not get the fifth Member here
21 today. She is unable to join us and we have waited as
22 long as I thought would be appropriate, have connected
23 and it's not going to be possible.

24 So rather than -- I should apologize for
25 delaying all those here for this application this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 morning but, quite frankly, I think this is the most
2 expeditious way to continue rather than hold out for
3 the rest of the day to see if we can possibly get this
4 together.

5 That being said, 17495, we will accept
6 into the record the filings of the applicant's
7 representation, Cynthia Giordano of Arnold and Porter,
8 which is Exhibit 37. We'll also take into the record
9 Exhibit 36. We have noted this is the letter of Mr.
10 Foley and we will move this to a Special Public
11 Meeting. We'll call that at 9:00. It will be prior
12 to our Public Hearing at 9:30 and, again, this will be
13 the only decision on that date at that time.

14 Very well. Let's move ahead then and,
15 again, I apologize for this today. With that though,
16 let's move ahead to the next case, 17483.

17 MR. MOY: Yes, sir, Application 17483 of
18 RLA Redevelopment Corporation, pursuant to 11 DCMR
19 section 3103.2, for variances from the residential
20 recreation space requirements under section 773, and
21 a variance from the loading berth requirements in
22 subsection 2201.1, to allow the construction of a new
23 mixed-use (residential/retail) building in the C-2-B
24 District at premises 1414 Belmont Street, N.W., Square
25 2660, Lot 235.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 On June 27, 2006 the Board completed
2 public testimony, closed the record and scheduled its
3 decision on July 11th. The Board requested additional
4 information in the form of clarifying drawings for the
5 project plans and that filing was submitted after the
6 deadline of July 5th. In fact, that filing the office
7 received on July 10, 2006 and as should be identified
8 in your case folder as Exhibit 34, I believe, and that
9 is from the applicant. And that completes the staff's
10 briefing, Mr. Chairman.

11 CHAIRPERSON GRIFFIS: Excellent. Thank
12 you very much. Let's move right into it. Anyone like
13 to open on this? Of course, it is for the variance,
14 as Mr. Moy has indicated, for the residential
15 recreation space.

16 We had asked for additional information in
17 terms of the articulation of that first floor area as
18 it related to the availability of open space that
19 might be used for common recreational activities. The
20 loading berth requirements under 2201.1, I think, were
21 also articulated in the hearings. Comments?

22 VICE CHAIR MILLER: So is the question
23 before us whether to waive the rules and allow into
24 the record the letter of July 10th which is identified
25 as Exhibit No. 34?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 CHAIRPERSON GRIFFIS: No, I thought that
2 was in the record. Mr. Moy, is it not timely?

3 MR. MOY: It was untimely because all of
4 the submissions had a deadline of July the 5th. This
5 arrived yesterday, July the 10th.

6 CHAIRPERSON GRIFFIS: Oh.

7 MR. MOY: Exhibit No. 34.

8 CHAIRPERSON GRIFFIS: Comments? Any
9 difficulty in accepting this into the record?

10 VICE CHAIR MILLER: No.

11 CHAIRPERSON GRIFFIS: I don't see any
12 reason why we wouldn't. Let's move ahead. Would you
13 like to open with comments?

14 VICE CHAIR MILLER: Okay. Well, this is
15 a variance from the residential rec requirements and
16 the minimum loading requirements. Again, it's a
17 variance test where we're looking at uniqueness or
18 exceptional conditions and then practical difficulties
19 that would arise for the owner from complying strictly
20 with the regulations and then whether there is any
21 substantial detriment in granting the variance.

22 I think that this case, the applicant did
23 show that there were unique and exceptional conditions
24 that made it difficult to comply with both of these.
25 The property is bounded on three sides by public

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 streets. There are grade changes. There is a 10 foot
2 grade change on one side and a 20 foot grade change on
3 another. The property has retail, residential and
4 office use and all those have to be on the sides with
5 street frontages.

6 There are -- also, 50 percent of the
7 retail is being offered at an affordable rate and 30
8 percent of the units are affordable. So there are
9 certain constraints that they are operating under,
10 both topographical and, I think, economic. The
11 practical difficulty is that in accommodating the
12 residential and the office and the retail and in the
13 footprint of the property there is not a lot of space
14 left for the residential recreation.

15 They started off before us presenting, I
16 think, like 1 percent and then when we had the
17 hearing, they were able to respond to our concerns and
18 raise up their residential rec to 3.9 percent. They
19 showed us the different areas that they were looking
20 at where they could put it or couldn't put it. They
21 converted eventually after the hearing the courtyard
22 space from parking to residential rec.

23 They are also using lobby space if they
24 can't really expand much further on the outside area
25 or else they encroach on their loading area, which is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 already condensed. And when they looked at the
2 rooftop there were problems with meeting the 25 feet
3 dimension that is required under the regs and they
4 also found that they would interfere with certain
5 private decks on the roof.

6 So I was convinced that they put
7 residential rec space wherever they could do it. Oh,
8 the other area we looked at was below grade, but most
9 of that was devoted to parking and that didn't seem
10 very appealing for residential rec space anyway to go
11 down underground. There wasn't any substantial
12 detriment, I don't think, from not providing any more
13 residential recreation space.

14 There is private space that is a
15 mitigating factor and I think that the total
16 recreation space, including private and public, is 9
17 percent. You know, they are dealing with also being
18 able to have the affordable units and I think there
19 were tradeoffs often with this residential rec space.
20 We looked at the tradeoffs of parking, like some of
21 the ANC wanted more parking and Office of Planning
22 said that there was sufficient parking.

23 And I don't really think that the regs
24 really as of now provide that we can just say, okay,
25 like for instance with the courtyard, parking is more

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 desirable so let's just put parking there instead of
2 residential rec. And so, therefore, that changed from
3 parking to residential rec. And there is also in the
4 area additional recreation in walking distances, the
5 YMCA and the Boys and Girls Club.

6 I think they also showed with respect to
7 the loading, again, that there were topographical
8 conditions. There is the slope of the alley and they
9 just didn't have the space for a large enough berth,
10 but they also make the case that they did need such a
11 large berth. And I don't believe any substantial
12 detriment was presented for the variance from the
13 loading, as well, requirements.

14 CHAIRPERSON GRIFFIS: Excellent. Others?

15 BOARD MEMBER ETHERLY: Mr. Chair, I would
16 like to associate myself with the remarks of my
17 colleague, Mrs. Miller, regarding her analysis. I
18 just wanted to confirm a couple of things because we
19 did have some back and forth at the last session on
20 this particular application, so I just want to be sure
21 that I'm clear in my understanding.

22 As the project stands now, we are looking
23 at parking in what is or was the courtyard space on
24 the street level, correct, or we're back to -- we're
25 recreational space there?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 VICE CHAIR MILLER: Yes, recreational
2 space.

3 BOARD MEMBER ETHERLY: Terrific. And with
4 respect to the rooftop recreation, we are still
5 private recreation space on the rooftop, no common
6 space there. And, finally, as it relates to the
7 loading requirement, we are looking at the loading
8 space having the capacity to accommodate the
9 additional size vehicle that DDOT had expressed some
10 desire to see in the loading berth, correct?

11 VICE CHAIR MILLER: I don't think so. I'm
12 going to double check that, but I don't think so. I
13 think DDOT raised that in the report and then the
14 applicant addressed it at the hearing.

15 CHAIRPERSON GRIFFIS: Right. We didn't
16 hear a response from DDOT.

17 VICE CHAIR MILLER: Yes.

18 CHAIRPERSON GRIFFIS: They just indicated
19 that there might be some difficulty and we were
20 showing and looking at the plans. The applicant was
21 indicating that that 20 feet 8 inch curb cut was the
22 appropriate size to get into the delivery bay and the
23 loading platform.

24 BOARD MEMBER ETHERLY: Okay.

25 CHAIRPERSON GRIFFIS: But there was the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 talk about the 30 foot dimension. The 20 foot service
2 vehicle, I believe, which was of some issue.

3 BOARD MEMBER ETHERLY: Well, again, Mr.
4 Chair, with those clarifications in mind, I just
5 wanted to kind of be clear on my understanding of the
6 project, but I am very comfortable that the case has
7 been more than adequately made with respect to all of
8 the relevant variances that are at issue here. And I
9 will also note my appreciation for the ANC's report in
10 this regard.

11 I think the ANC was very helpful and
12 instructive in terms of helping us weigh and balance,
13 if you will, this ongoing question that we have now
14 seen in a number of separate applications, the issue
15 of recreation, private recreation space, and balancing
16 that between parking, the accessibility and
17 availability of public recreation space in the
18 surrounding community.

19 It's a question that I'm sure is going to
20 come before this body again, but I think the ANC's
21 testimony was very helpful as we tried to weigh that
22 balance. In the absence of getting kind of a
23 definitive direction from DDOT, I just felt that that
24 was very helpful in terms of their oral presentation.
25 Thank you, Mr. Chair.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 CHAIRPERSON GRIFFIS: Good. Thank you
2 very much. Anything else?

3 VICE CHAIR MILLER: Well, I just want to
4 note I thought it was interesting that the ANC really
5 expressed concerns both about not enough residential
6 recreation space and not enough parking, you know, and
7 I guess I was left with the impression that the
8 parking was the biggest issue, but that my
9 understanding of the regs is that we can't just
10 substitute parking for residential rec space and that
11 those regs are being examined by the Zoning
12 Commission.

13 CHAIRPERSON GRIFFIS: Good. Anything
14 else? I think it's excellent that our deliberation
15 focuses on the ANC and the ANC's report because I
16 think that they really summarize. Although very
17 succinctly, they summarize my greatest concern of
18 this. I think this project specifically had the most
19 opportunity to do everything that one would want on
20 this property.

21 We talk about balance and how we trade off
22 residential rec and parking or other issues, and the
23 RLA is the applicant here. The RLA owns the property.
24 They are not in for any land basis. So the
25 flexibility of what can happen here, I think, is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 disappointing in what we have seen and that fits into
2 the uniqueness and practical difficulty in my mind.

3 What is the practical difficulty? We have
4 had a lot of the kind of buzz phrases thrown at us in
5 this application, this affordability level and all,
6 and I think the ANC really was the one that
7 articulated quite well of look, if you're going to put
8 in the size of the units and looking for this specific
9 population to market to move in here, aren't they
10 going to need specific amenities that would relate
11 directly to that?

12 Well, isn't that exactly what this is
13 supposed to have been addressing? And for us to be
14 concerned about the design of a courtyard, because it
15 didn't make any sense to have surface parking in an
16 area that will be private, but will be publicly
17 viewed, will be one of the pieces or the faces of a
18 project.

19 To me, it was incredibly disappointing
20 that at this level, that is what we would have to be
21 dealing with even to the fact of the matter that we're
22 looking at a single line in an area that we don't
23 really know what it is and it's a small 3 foot door.
24 It's like the thought process wasn't there for the big
25 picture to address all of these pieces.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 And maybe it was premature for them to be
2 here in terms of the design and maybe we caught too
3 much on the design. I don't know. Obviously, I don't
4 have -- we don't ask for all of the information and at
5 times just little pieces are given to us. But, you
6 know, in the big picture of this, it's somewhat
7 disappointing that we would be -- that we're caught in
8 this kind of trading back.

9 I think in other applications that it is
10 appropriate and in this one it is appropriate to a
11 certain level, but the amount that came in gave me a
12 big concern. The second is, I think, we're missing
13 opportunities here and I think this large roof area
14 that we're looking at and just having this private
15 piece and the rest of it is not even utilized, you
16 know, somehow it seems like all the elements were here
17 to make that happen and I don't see it.

18 Does that mean they don't make the test?
19 You know, I don't know. It isn't the strongest piece
20 to me. I think that there is probably better service
21 to, one, the whole development team in looking at
22 different ways to deal with this and, certainly, the
23 impact on this area, but I will leave that as my
24 preliminary comments and then open it up for further.

25 The last piece of concern I do have for

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 the substance of the element is that one of the Board
2 Members did bring it up, which was addressed
3 definitively by the applicant, but I don't think
4 persuasively, is whether NCPC review is required on
5 this application.

6 And I bring that up. It doesn't have to
7 do with the pertinence or our review on this, but I
8 would hope that we don't just -- as any application
9 that we don't just, you know, move ahead with
10 diligence and not actual factual bearing.

11 But, Ms. Miller, you had something else to
12 say?

13 VICE CHAIR MILLER: Well, I was just going
14 to say, I mean, I was also hoping that they would put
15 residential recreation space, public residential
16 recreation space, up on the roof because I think that
17 is an exciting opportunity for residents and it's too
18 bad if they don't have it.

19 But I didn't see how that was going to
20 happen if they didn't meet the dimension requirements,
21 other than what you seem to indicate as imagining a
22 whole new design and we just can't make them come up
23 with a whole new design. So it looked like the best
24 that they could do given the design that was presented
25 to us.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 CHAIRPERSON GRIFFIS: What dimensional
2 requirements wouldn't they make?

3 VICE CHAIR MILLER: We have a 25 foot
4 dimensional requirement.

5 CHAIRPERSON GRIFFIS: Uh-huh.

6 VICE CHAIR MILLER: I --

7 CHAIRPERSON GRIFFIS: They have got a
8 private deck of 11 feet 11 inches, an area not used of
9 13 feet and a private deck of 5 feet. So if I add all
10 that up it's well beyond 25 feet at the minimum
11 dimension of where their units are, and that as we go
12 across it would seem just on scale if they would have
13 that again. But even so, I mean, I guess I go even
14 beyond that from the resident.

15 I mean, giving relief from the dimensional
16 requirements I think would be an easier step to do.
17 I don't think they need it even there, but even if it
18 wasn't -- even if it was, as we have looked at with
19 other -- I mean, I'm not holding this applicant up for
20 any other standards, except those that they came to us
21 with. They said, look, this is what we do. We're
22 providing all these things.

23 And so on the facts and basis of how they
24 are organized and what they are supposed to be doing
25 in terms of this development is what I assess them on,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 and the fact that they don't animate the roof,
2 although this is supposedly some great development
3 program for the area and the community, why are we
4 missing that? Why are the residents of this building,
5 why is the city not able to utilize that, that
6 portion.

7 I mean, obviously, we had the traditional
8 not being able to access it and the cost of an
9 elevator and the cost of additional stairs. I
10 understand, but it wouldn't take a full redesign of
11 the building or the footprint. I mean, the space is
12 there. The space is not used. It's basically thrown
13 away, you know?

14 VICE CHAIR MILLER: I guess that then the
15 other aspect of it was the cost that you were
16 referring to and the connection to providing
17 affordable units. That's where I think that the --

18 CHAIRPERSON GRIFFIS: Right.

19 VICE CHAIR MILLER: -- balancing comes in,
20 you know?

21 CHAIRPERSON GRIFFIS: I totally agree. I
22 totally agree and especially when you paid a 2005 or
23 a 2000 land cost, I think that that is -- obviously,
24 it's part and parcel of what it is to develop and it
25 does put you into a level. That is what we have seen

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 all along 14th Street, which is a predominantly area
2 where we find the residential rec requirements, or
3 along the larger corridors and we have private
4 developers.

5 It seems to me that the facts of this
6 matter, there is no land cost here. The RLA is the
7 applicant, am I correct? Okay.

8 VICE CHAIR MILLER: So are you saying that
9 you're not convinced that there is an economic reason
10 for them not being able to put the recreation on the
11 roof?

12 CHAIRPERSON GRIFFIS: Yes, not even
13 remoteness. I think they threw out a dollar amount
14 of, what, \$20,000 or \$30,000 if I recall correctly.
15 It could be \$60,000. On a development of this size,
16 if that breaks the budget, I think that's what my
17 comment was in the hearing, then this isn't a viable
18 project. But no, I don't think there was a persuasive
19 piece.

20 I mean, it oftentimes is part of the
21 larger picture of what we're talking about of how we
22 get to the roof, how it sets into the floor plans, how
23 it disrupts or if there is uniqueness of configuration
24 and, yes, the overall program, the overall cost of it.
25 But this was presented as something totally different.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 This was not presented in their opening
2 statement. This was not hi, good morning, we're
3 private developers and this is our condo project. It
4 was exactly the opposite. This was the RLA presenting
5 a project of which was of great community benefit. It
6 was a public process that was decided upon and they
7 have moved ahead. But then they fall back on,
8 frankly, the arguments that we hear all the time.

9 So they either are differentiated or they
10 are not and that is where I can't find the balance.
11 I can't find the persuasiveness of what we're looking
12 at. I am persuaded by the need for residential
13 recreation relief. I don't disregard that. I'm just
14 not persuaded that the best effort has been
15 accomplished here and in terms of providing the
16 amenities or utilizing the space that is actually
17 created by the massing that they are proposing.

18 And, therefore, I don't see why we can't
19 or what becomes the practical difficulty in reaching
20 that level or an increased level.

21 BOARD MEMBER ETHERLY: Well, Mr. Chair,
22 with that in mind I'm more than happy to perhaps move
23 us forward and we can -- I would definitely suggest my
24 willingness to continue our discussion under the guise
25 of a motion and that we can kind of just proceed, keep

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 the day moving forward.

2 CHAIRPERSON GRIFFIS: Excellent.

3 BOARD MEMBER ETHERLY: It would be my
4 motion to move approval of Application No. 17483 of
5 RLA Redevelopment Corporation, pursuant to 11 DCMR
6 section 3103.2, for variances from the residential
7 recreation space requirements under section 773, and
8 a variance from the loading berth requirements under
9 subsection 2201.1, to allow the construction of a new
10 mix-used residential/retail building in the C-2-B
11 District at premises 1414 Belmont Street, N.W., and I
12 would invite a second.

13 VICE CHAIR MILLER: Second.

14 BOARD MEMBER ETHERLY: Thank you very
15 much, Mrs. Miller. Not to recap my earlier statement,
16 but I will again associate myself with Mrs. Miller's
17 remarks as it related to the summary of the
18 application.

19 I did find myself comfortably convinced of
20 the appropriate grounds being present here with regard
21 to the application and as I look to get my bearings
22 within the Office of Planning's report, again the --
23 as I recall, we had some discussion where we looked at
24 the roof plan in one of its iterations.

25 And, as Mrs. Miller identified, there were

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 a number of considerations that I felt were
2 comfortably addressed by the applicant as it related
3 to some of their difficulties with regard to
4 increasing the residential recreation space usage on
5 the rooftop, some of which were related to the
6 location of particular HVAC elements and equipment,
7 some of which were related to the positioning of some
8 of the other units that are already on the roof and
9 have residential rec space associated with them.

10 I agree in part that there perhaps could
11 have been somewhat more aggressive use of
12 opportunities here, but I think as we look at the
13 overall project and, in particular, some of the street
14 frontage issues that the applicant has to deal with
15 with regard to accessing the structure, I think all of
16 that worked to create, again, I felt, a fairly
17 compelling case for satisfaction of the variance test.

18 CHAIRPERSON GRIFFIS: Good. Others?

19 VICE CHAIR MILLER: I guess I would say
20 that, you know, I find it disappointing if there could
21 be public residential recreation space up on the roof
22 and there isn't, but I guess based on the evidence
23 that I saw in the record, it didn't appear to me that
24 they could do that and I think that it cuts both ways
25 with it being the RLA.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 I mean, the fact that they are providing
2 affordable units I think does cut into what they have
3 left to spend in trying to comply with the building
4 code and put up an elevator, an extra stairway or
5 things like that to provide recreation space on the
6 roof.

7 CHAIRPERSON GRIFFIS: Anything else?

8 VICE CHAIR MILLER: I think I addressed it
9 earlier.

10 CHAIRPERSON GRIFFIS: Indeed. Good. One
11 point that we hadn't brought up, and it's probably
12 appropriate that they didn't bring it up, is one of
13 the uniquenesses of the WMATA tunnel that was close
14 by. I didn't see that raising any sort of practical
15 difficulty.

16 It certainly is a practical difficulty in
17 some of the other elements, as was indicated, and as
18 they started off the replanning based on the actual
19 property line that was somehow recently discovered.
20 Facts in the case, obviously, didn't come up in
21 deliberation and I think there are good reasons for
22 that.

23 Lastly then, we do have a motion before us
24 that is for the approval of the relief, one, the
25 residential rec and also the loading berths. The

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 loading I think was obviously -- well, the loading was
2 very persuasive and I think that was directly related
3 to the site orientation and also the grade and how,
4 one, the uniqueness of that being three sided with an
5 alley also, and then trying to accommodate some of the
6 particularities of the traffic circulation and
7 bringing the loading appropriately in where it should
8 be. I think it was well-addressed.

9 And, lastly, my comments, although perhaps
10 I surprised Board Members in my strongness and
11 position of being disappointed in some of the elements
12 of this, I don't think my disappointment rises to the
13 level of not supporting this motion, because I think
14 overall, one has to step back and look at the bigger
15 picture of how this all fits into what is being
16 proposed and what any applicant puts to come to this
17 level, one, to request relief, but then also in the
18 larger picture, what it is to be on schedule to be
19 proposing a development and especially of this size.

20 One of the pieces that I think is most
21 intriguing of this is the mixed-use, as Mr. Etherly
22 started to bring up, the mixed-use possibility of this
23 project and that is the retail. Also, the different
24 types of housing product that they are proposing to
25 put together. Again, those are I think important

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 aspects to the project, could maybe have been
2 presented as -- well, I won't go there.

3 I think it's a better scenario in terms of
4 animating the courtyard as has now been proposed. And
5 I know that the letter that we have accepted into the
6 record indicated that they wanted some flexibility in
7 terms of the design and the development of that area
8 and other areas. And I don't think that there is
9 anything that I have heard from the rest of the Board
10 that would curtail any sort of continued articulation
11 of areas, as long as it wouldn't impact that relief
12 which is sought today.

13 As I said at the very beginning, I don't
14 deny the fact that probably some relief in residential
15 recreation would have been needed for relief. The
16 disappointment is how it was all put together, how the
17 balancing of it -- whether actually more parking could
18 have been provided with different scenarios, I don't
19 know, and additional residential rec also and how it
20 was animated or even just a private, accommodating the
21 private areas might well have been served.

22 There it is. Mr. Etherly, your motion.
23 Anything further?

24 BOARD MEMBER ETHERLY: Nothing further,
25 Mr. Chair.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 CHAIRPERSON GRIFFIS: Okay. If there is
2 nothing further, let me ask for all those in favor of
3 the motion to signify by saying aye.

4 ALL: Aye.

5 CHAIRPERSON GRIFFIS: And opposed?
6 Abstaining? Mr. Moy?

7 MR. MOY: Yes, sir. Staff would record
8 the vote as 3-0-0. This is on the motion of Mr.
9 Etherly to approve the application, seconded by Ms.
10 Miller, also in support of the motion, Mr. Griffis.
11 Mr. Chairman, we also have two absentee ballots, one
12 from Mr. Mann and one from Ms. Mitten, both
13 participating on the case and both of whom have voted
14 to approve the application. So that would give a
15 resulting final vote of 5-0-0.

16 CHAIRPERSON GRIFFIS: Excellent. Thank
17 you very much.

18 MR. MOY: Would the Board care or desire
19 for a summary order?

20 CHAIRPERSON GRIFFIS: Board Members?

21 VICE CHAIR MILLER: I think a summary
22 order would be appropriate.

23 BOARD MEMBER ETHERLY: No objection, Mr.
24 Chair. I think a summary order would be appropriate.

25 CHAIRPERSON GRIFFIS: Very well. Let's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 waive our rules and regulations and issue a summary
2 order on this. Thank you very much. Let's move
3 ahead.

4 MR. MOY: The next case is Application No.
5 17468-A of the Intervenor's Cross Appeal. This would
6 be pursuant to 11 DCMR section 3100 and 3101, from the
7 administrative decision of the Zoning Administrator,
8 Department of Consumer and Regulatory Affairs, to deny
9 issuance of Certificate of Occupancy, to allow the
10 expansion of a nonconforming apartment building from
11 three units to six units. The subject property is
12 located in the HS (H Street Northeast Commercial
13 Overlay)/C-2-A District at premises 1123 H Street,
14 N.E., Square 982, Lot 823.

15 If the Board will recall, this cross
16 appeal is an outgrowth of Appeal No. 17468 of ANC-6A
17 which the Board convened in Public Hearing on May 16,
18 2006 and it was at that time that the Board scheduled
19 a Public Hearing for this intervenor's cross appeal
20 for June 27, 2006, at which point the Board completed
21 public testimony and scheduled its decision on July
22 11th.

23 The Board then requested supplemental
24 information in the form -- from the cross appellant to
25 address the issue of the pre-1958 Certificate of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Occupancy, and that filing was submitted to the Office
2 by the cross appellant and is identified in your case
3 folders as Exhibit 28. So, at this point, the Board
4 is to act on the merits of the intervenor's cross
5 appeal of the ZA's denial to issue a C of O. And that
6 completes the staff's briefing, Mr. Chairman.

7 CHAIRPERSON GRIFFIS: Excellent. Thank
8 you very much, Mr. Moy. I think we can go fairly
9 expeditiously on this and I think for this reason.
10 This was factually, legally very clear, I believe.
11 There were two basic issues of this, well three, but
12 in terms of the substance of the regulations I think
13 we were looking at the fact of, one, whether this was
14 a conversion and based on that, the second element of
15 that conversion, was this a building, an apartment in
16 existence prior to 1958.

17 The third issue, as I say there are three,
18 was the estoppel argument. I think we can address
19 that subsequently after the substantive deliberation
20 on this. And it comes down to the matter as we had
21 started off, and I think it was excellent discourse
22 both in the presentation of the participants in this
23 appeal and also in the Board's questioning, the
24 discussion around conversion.

25 And, quite frankly, in my deliberation

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 there is definitiveness in terms of how we look at
2 conversions and it comes from the Zoning Commission
3 Order 211, I believe it was, which direct -- I think
4 was on point in terms of addressing the element, thank
5 you very much, for us. And the fact of the matter, as
6 I read 211 and also our regulations, if one was an
7 apartment building, if it was to be made into a condo
8 or renovated that it was not in any means a
9 conversion, but maintained an apartment building.

10 Now, the issue in this particular case and
11 the detail was the fact that we had older or rather
12 not old enough Certificate of Occupancies. We had had
13 them from the '60s. We have now submitted into the
14 record in the past final submission not a Certificate
15 of Occupancy, but an application for the Certificate
16 of Occupancy, which is stamped and signed approved for
17 issuance and the date on that is 1951.

18 Noting the difficulty in finding records,
19 I think this is very adequate in establishing the
20 preexisting condition of an apartment building prior
21 to 1958, so it comes back in full circle of,
22 therefore, in our regulations would this be looked on
23 under 401 as a conversion to an apartment.

24 And I would think that the facts of this
25 case definitively point to fact that it is not a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 conversion and, therefore, would not, under 401 for
2 the lot occupancy/lot area, be under the constraints
3 of a 900 square feet apartment per the lot. Others?

4 VICE CHAIR MILLER: I just want to say I
5 think, basically, the appellant alleged that the ZA
6 erred in denying the Certificate of Occupancy for two
7 reasons. One for applying for a 1.3 to this property
8 and then the other one on the basis of the doctrine of
9 collateral estoppel, which you basically said.

10 And I would agree with you that after
11 listening to the testimony at the hearing, which was
12 very helpful, that 401.3 is not applicable, that the
13 ZA did err in relying on that provision, because 401.3
14 reads "to apply that 900 square foot rule to
15 conversions to apartment houses," and the evidence
16 that was presented to us that you mentioned shows that
17 this was an apartment house. So there couldn't have
18 been a conversion from an apartment house to an
19 apartment house. It would have to be from some other
20 type of property.

21 And the appellant also brought our
22 attention to 199.1 for definition of apartment house,
23 and I believe that reads "three or more units" and the
24 evidence that we have in the record shows that this
25 property was an apartment house, that it had three

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 units and that it was -- the interior space is being
2 reconfigured into six, but it still is an apartment
3 house to an apartment house, so that there isn't a
4 conversion going on and nor is there an enlargement
5 going on pursuant to 2002.5.

6 So I think that just on the words
7 themselves in 401.3 that talks about conversion to
8 apartment house that this is not one and, therefore,
9 the ZA did err in determining that it was applicable.
10 I would also suggest that we don't need to reach the
11 issue of collateral estoppel, if we decide that the ZA
12 erred on the interpretation of 401.3.

13 CHAIRPERSON GRIFFIS: I'm sorry, say that
14 again. We don't need to reach the estoppel?

15 VICE CHAIR MILLER: There were two grounds
16 alleged.

17 CHAIRPERSON GRIFFIS: Right.

18 VICE CHAIR MILLER: And if we find on the
19 first grounds, I don't believe we need to get into the
20 issue of collateral estoppel.

21 CHAIRPERSON GRIFFIS: Right, agreed.
22 Good. Mr. Etherly?

23 BOARD MEMBER ETHERLY: I'm in complete
24 agreement, Mr. Chair, and would be prepared to move
25 forward with a motion if the Chair deems it

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 appropriate at this time.

2 And it would be my motion to grant BZA
3 Cross Appeal No. 17468-A, 1124 E Street, N.E. and find
4 that the Zoning Administrator did err. I'm looking
5 for my appropriate closing phraseology, but that the
6 Zoning Administrator did err in his decision to deny
7 the issuance of Certificate of Occupancy to allow the
8 expansion of a nonconforming apartment building from
9 three units to six units, the subject property of
10 course located in the C-2-A District at premises 1123
11 H Street, N.E. and I would invite a second.

12 CHAIRPERSON GRIFFIS: Second.

13 BOARD MEMBER ETHERLY: Thank you very
14 much, Mr. Chair. I won't belabor the deliberation.
15 Again, I am in complete agreement with the relevant
16 law here or the interpretation of Zoning Commission
17 Order No. 211 and all of the remarks that were made by
18 my colleagues. Thank you.

19 CHAIRPERSON GRIFFIS: Excellent. Thank
20 you very much. Other comments? I believe the last
21 piece on that is just that 211 was -- it's not often
22 that we have, whether it be a BZA order or a Zoning
23 Commission order, that is directly on point and it
24 certainly was and relating to, in fact, the number of
25 units and the expansion of units, and it was also

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 upholding the BZA's decision on two, I believe it was
2 two, prior decisions that were potentially under
3 appeal or under appeal.

4 Very well. Anything further? I believe
5 we have other participating members on this that have
6 submitted absentee ballots. Mr. Moy, is that correct?
7 If they had any comments on that, it would probably be
8 an appropriate time to --

9 MR. MOY: Yes, sir. I just want to note
10 for the Board that we have two absentee ballots of two
11 Members who are participating on this case, and one of
12 the absentee ballots, one of the Members has
13 substantial comments, so I would leave it to the Board
14 whether you want that read into the record.

15 CHAIRPERSON GRIFFIS: Absolutely.

16 MR. MOY: Or discussed or not.

17 CHAIRPERSON GRIFFIS: Let's hear them.

18 MR. MOY: Absolutely. You want to hear
19 it?

20 CHAIRPERSON GRIFFIS: Sure.

21 MR. MOY: Okay. It's --

22 CHAIRPERSON GRIFFIS: Unless they don't
23 support my position, then we don't want to hear it.

24 MR. MOY: No, I pause, because it's rather
25 lengthy, but I will read it.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 CHAIRPERSON GRIFFIS: Oh, it is? Okay.

2 MR. MOY: Okay. These comments are from
3 Carol Mitten and it starts with "Explanation of vote
4 in Appeal No. 17468-A. Number one, on the issue of
5 estoppel, although I can see the merits of the
6 property owner's argument that the District is
7 estopped from withholding the C of O, the fact that
8 courts do not favor estoppel, as the basis for denial
9 of the appeal, precludes me from voting to support the
10 appeal based on estoppel.

11 Number two, on the issue of merits, there
12 is no question that the issue being debated is a fine
13 point of the Zoning Regulations and that reasonable
14 people can differ on the interpretation. The language
15 of the ordinance is not clear (however precisely one
16 may choose to read it), but I think the intent can be
17 gleaned from a thorough reading of the text of the
18 regulations and the Zoning Commission Order No. 211.

19 First, there was clearly a general
20 intention through the introduction of a minimum area
21 requirement per apartment to limit density in the R-4
22 Zone. There was no other intention, that I can think
23 of, that could be described to the Commission in
24 creating this particular provision. It speaks to one
25 of the principal purposes of the Zoning Regulations,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 as expressed in section 101.1(b), 'Prevent undue
2 concentration of population and overcrowding of land.'

3 Second, there was a specific intention of
4 the Commission, as articulated in Order No. 211, to
5 limit the number of apartments in the R-4 Zone. 'The
6 proposed amendment would limit the number of
7 apartments based on the area of the lot which could be
8 located in a building in an R-4 District.' See,
9 paragraph number 1 of Order No. 211.

10 The ordinance was apparently clear on the
11 applicability of the density limitation on the
12 conversion from single-family use to apartment house
13 use in a pre-1958 dwelling. Later, the focus of Order
14 No. 211 was on the applicability of the conversion
15 criteria from some other multiple dwelling use to
16 apartment use. It did not speak to the issue directly
17 in question in the cross appeal before the Board,
18 which is conversion from one intensity of apartment
19 house to another.

20 One can focus, as the property owner has
21 done, on a narrow reading of the term apartment house
22 where no distinction is made as to the number of units
23 as long as there are three or more. Therefore, in the
24 property owner's rendition of the facts, there can
25 only be a conversion once and any future increased

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 intensity of the apartment house use in the R-4 is
2 intended to be unfettered by any density limitation.

3 This notion that conversion from one
4 degree of density of apartments, in this case three,
5 to another degree of density of apartments, in this
6 case six, is generally what the Commission addressed
7 in Order No. 211 and the section that it modified.
8 Every chance it got to address this issue
9 specifically, the Commission said, in essence, apply
10 the density standard.

11 Otherwise, as I suggested at one point
12 during the hearing, an applicant could convert a large
13 single-family dwelling to the maximum number of units
14 permitted by the land area and come back later and
15 increase the number of units without regard to the
16 land area, because the second increase in density
17 would not qualify under the property owner's reading
18 as a conversion. That kind of reasoning is not
19 supportable in my reading of the Zoning Regulations as
20 a whole.

21 I think this case is one in which
22 reasonable people can disagree on what the precise
23 wording of the ordinance means, which is why we have
24 to look to the broader context in which the ordinance
25 was written."

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 CHAIRPERSON GRIFFIS: What is her vote?

2 MR. MOY: Oh, you want to hear the vote?
3 I'm sorry. She voted to deny the cross appeal and
4 also the vote to deny the cross appeal based on
5 estoppel.

6 CHAIRPERSON GRIFFIS: Okay. Excellent.
7 Excellent. I think we have established that we can
8 all be reasonable people. That being said, it brings
9 up an interesting point. I don't know if the Board
10 Members want to address that and perhaps not.

11 Ms. Mitten is articulating I think what
12 she did bring up during the hearing and I think
13 appropriately so, and I think we had time to address
14 those elements. I believe she did use the example of,
15 you know, increasing 100-fold the number of units that
16 might be in a building and I take some issue with that
17 in terms of the reality if we're talking about a fixed
18 square footage, and I think the analogy that was used
19 during the hearing was the conversion, although it
20 needs to happen once, as it's reconfigured does that
21 make it a conversion to an apartment building if it's
22 an apartment building?

23 So if it's three, if it's six, if it's 50,
24 if it's 54. Certainly, I absolutely agree with Ms.
25 Mitten in terms of density. That is what this is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 trying to regulate as the R-4 doesn't have an FAR
2 density. It has a height and a lot occupancy density
3 and a use allowable in terms of single-family and
4 flat.

5 What we do have in the R-4 is large
6 apartment buildings that were built as a matter-of-
7 right prior to 1958 or as a matter-of-right now with
8 our regulations. That density I don't think is that
9 different, if different at all, depending on the
10 number of and types of units that you have with an
11 existing building.

12 Okay. Anything further then? Do we have
13 any other notes, comments?

14 MR. MOY: No, sir. Well, we have another
15 vote from Mr. Mann.

16 CHAIRPERSON GRIFFIS: Okay. Very well.
17 If there's no comments attached to that vote, then why
18 don't we move ahead and we do have a motion before us
19 which has been seconded. I would ask for all those in
20 favor to signify by saying aye.

21 ALL: Aye.

22 CHAIRPERSON GRIFFIS: And opposed?
23 Abstaining? And Mr. Moy will now record the vote.

24 MR. MOY: The staff would record the vote
25 as 3-0-0 on the motion of Mr. Etherly to grant the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 cross appeal that the ZA did err to deny the C of O,
2 seconded by the Chairman, Mr. Griffis, also in support
3 of the motion, Ms. Miller.

4 As I mentioned earlier, we have two
5 absentee ballots. Carol Mitten has voted to deny the
6 cross appeal and Mr. Mann has voted to grant the
7 appeal, the cross appeal. So that would give a final
8 resulting vote of 4-1-0.

9 CHAIRPERSON GRIFFIS: Excellent. Thank
10 you very much. Anything else?

11 MR. MOY: We do have another, the last
12 case for decision, Mr. Chairman, and that is a Motion
13 for Reconsideration of Application No. 17395-A of
14 Jemal's Citadel, LLC, pursuant to 11 DCMR section
15 3126.

16 The original application was pursuant to
17 11 DCMR section 3103.2, for a variance from the rear
18 yard requirements under section 774, a variance from
19 the nonconforming structure requirements under
20 subsection 2001.1, a variance from the requirement to
21 provide a loading berth that is 55 feet deep under
22 subsection 2201.1 and 2201.6, to allow the
23 establishment of a mixed-use project including a
24 grocery store and general offices in the RC/C-2-B
25 District at premises 1631 Kalorama Road, N.W., Square

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 2572, Lot 36.

2 On June 26, 2006, the Reed-Cooke
3 Neighborhood Association party in opposition filed a
4 motion for reconsideration of the decision and order.
5 That is in your case folders identified as Exhibit
6 102. We also have a second filing on June 30, 2006
7 where the applicant filed a response to the motion for
8 reconsideration and that is identified in your case
9 folder as Exhibit 103.

10 Staff will conclude by saying that the
11 final order was issued on June 12, 2006. This filing
12 for a motion for reconsideration was received in the
13 Office of Zoning 14 days from the issuance of the
14 final order. With three days mailing, that would make
15 the filing untimely by one day. And staff will just
16 conclude at this point, Mr. Chairman.

17 CHAIRPERSON GRIFFIS: Excellent. Thank
18 you very much, Mr. Moy. Let's pick that up. Ms.
19 Miller, I believe, is prepared to address the
20 timeliness on this.

21 VICE CHAIR MILLER: Yes. I think that the
22 motion is untimely. It was submitted 14 days after
23 the issuance of the order and service on the parties.
24 Regulation 3126.2 says that "Any party may file a
25 motion for reconsideration or a hearing of any

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 decision of the Board provided that the motion is
2 filed with the Director within 10 days from the date
3 of issuance of a final written order by the Board."

4 3125.6 says "For purposes of this chapter,
5 a decision or order shall be and become final upon its
6 filing in the record and service upon the parties."
7 And there is another provision, 3110.3, which says
8 "Whenever a party has the right or is required to do
9 some act within a prescribed period after the service
10 of a notice or other paper, and the paper or notice is
11 served upon the party by mail, three days shall be
12 added to the prescribed period."

13 So assuming that this was served by mail,
14 just to give them the greatest latitude of time here,
15 they are one day late. Mr. Moy is correct.

16 And I want to say that this is a
17 jurisdictional regulation and I don't believe that we
18 have the authority to waive that. We often waive
19 filing deadlines, but when we're talking about a time
20 when an order becomes final, I think that we don't
21 have waiver authority, that when an order becomes
22 final, that means that other parties can take action,
23 people can take action on it. They can file their
24 permits.

25 It means it's out the door. We no longer

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 have any authority over that order. I think even
2 ourselves, we couldn't decide on our own that we
3 wanted to reconsider, that this limits the Board as
4 well. So, therefore, I would suggest that the
5 appropriate course of action for this Board would be
6 to dismiss on grounds of lack of jurisdiction because
7 the motion is untimely.

8 CHAIRPERSON GRIFFIS: Excellent. Thank
9 you. So if I understand what you're saying is that
10 there are certain points in our regulations of which
11 we cannot waive our rules, but we have to maintain
12 adherence to those and one of which is timeliness?

13 VICE CHAIR MILLER: Right. We have got
14 other ones that affect jurisdiction, but basically the
15 ones that affect jurisdiction.

16 CHAIRPERSON GRIFFIS: Right.

17 VICE CHAIR MILLER: If we don't have
18 jurisdiction, we can't act on it.

19 CHAIRPERSON GRIFFIS: Right. And when you
20 say jurisdiction, as I think it was pertinent that you
21 said it, is that as we issue an order and it goes out
22 the door, there is that certain point, a threshold of
23 which it's 13 days for us, that we can no longer bring
24 it back and obviously it gives great reliance on all
25 participants of our decision.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 That is pretty clear and I think it is
2 very clear in terms of the evidence that this is not
3 timely. I would add to that, however, as we do and
4 had read the motions and the submissions in, I think
5 that that is the pertinent point to decide this on.
6 But I would just make a side note that I think that it
7 would fail on its merits also in that relief from the
8 use provisions of Chapter 14 were not requested.

9 Therefore, it wasn't an element of relief
10 requested of the Board to deliberate and decide on.
11 And so I don't know that it would have much pertinence
12 for us opening the record for deliberation on an item
13 that was, in fact, not part and parcel of the actual
14 application. There it is then.

15 Anything else? Very well. Is there a
16 motion?

17 VICE CHAIR MILLER: I would move that we
18 dismiss the motion for reconsideration of Application
19 No. 17395-A of Jemal's Citadel, LLC, pursuant to 11
20 DCMR section 3126.

21 BOARD MEMBER ETHERLY: Seconded, Mr.
22 Chair.

23 CHAIRPERSON GRIFFIS: Thank you. Anything
24 further? Very well. All those in favor of the motion
25 signify by saying aye.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 ALL: Aye.

2 CHAIRPERSON GRIFFIS: And opposed?
3 Abstaining?

4 MR. MOY: Staff would record the vote as
5 3-0-0. This is on the motion of Ms. Miller to dismiss
6 on grounds of jurisdictional grounds, because of the
7 lack of timeliness, seconded by Mr. Etherly, also in
8 support of the motion, Mr. Griffis.

9 Mr. Chairman, we also have two absentee
10 ballots again, one from Mr. Mann and one from Mr.
11 Jeffries, both of whom have voted to deny or dismiss
12 the motion for reconsideration. So that will give a
13 resulting final vote of 5-0-0.

14 CHAIRPERSON GRIFFIS: Excellent. Thank
15 you very much. Is there anything further for the
16 Board in the morning session?

17 MR. MOY: No, sir.

18 CHAIRPERSON GRIFFIS: Very well. Let's
19 adjourn the morning session and, at the same time,
20 note that it is getting on to almost 1:00. We will
21 reconvene at 2:00 this afternoon.

22 (Whereupon, the Public Meeting was
23 recessed at 12:55 p.m. to reconvene at 2:25 p.m. this
24 same day.)

25

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

2 2:25 p.m.

3 CHAIRPERSON GRIFFIS: With that, Mr. Moy,
4 I'm going to dispense with any opening remarks, but
5 note to call to order our Public Meeting in
6 continuance from this morning and have you announce
7 the one element for our address.

8 MR. MOY: Yes, sir. Thank you very much,
9 Mr. Chairman. This goes to the motion for
10 Reconsideration of Application No. 17395-A of Jemal's
11 Citadel. I apologize. The staff has received a
12 friendly suggestion that to revisit our calculation
13 and it appears that the 10 day period for receiving
14 motions for reconsideration plus the three days
15 mailing took this particular motion within the in-day
16 which fell actually on a Sunday.

17 And according to section 3110.2, that when
18 an action -- when an in-period falls within that
19 weekend or a holiday, then you go to the next business
20 day, which in this case was a Monday, which took us to
21 June 26, which, in this case, fell within the
22 timeliness period.

23 CHAIRPERSON GRIFFIS: Excellent. Do we
24 need any other announcement of the case? We can jump
25 right in?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MR. MOY: No, I think that's fine.

2 CHAIRPERSON GRIFFIS: Excellent. Good.
3 It teaches us not to speak without a calendar in front
4 of us. That being said, of course, we had dismissed
5 this based on timeliness. I think we ought to open
6 this up for reconsideration on our own motion. Ms.
7 Miller?

8 VICE CHAIR MILLER: I would move for
9 reconsideration of our order.

10 CHAIRPERSON GRIFFIS: So moved. Is there
11 a second?

12 BOARD MEMBER ETHERLY: Second, Mr. Chair.

13 CHAIRPERSON GRIFFIS: Thank you. Is there
14 any discussion? Very well. We have a motion to
15 reconsider, it has been seconded. All those in favor
16 signify by saying aye.

17 ALL: Aye.

18 CHAIRPERSON GRIFFIS: Opposed? Very well.
19 Ms. Miller?

20 VICE CHAIR MILLER: This morning I had
21 urged that we dismiss for lack of jurisdiction and
22 therefore we really didn't get into a discussion on
23 the merits. So I think, at this point, we should
24 discuss the merits of the motion for reconsideration.

25 CHAIRPERSON GRIFFIS: Excellent.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Referring to the merits, of course, there was a motion
2 for us to reconsider the order based on the fact that
3 this was a supermarket that had come in for certain
4 variances, not attendant to the use, but rather
5 attendant to the loading and rear yard and part of the
6 additions and reconfigurations. The motion, in my
7 understanding, to paraphrase it is the fact that use
8 provisions in Chapter 14 of the Reed-Cooke Overlay
9 designate under 1401.1 certain restrictions.

10 It was asserted that this use would come
11 under those restrictions. However, there was no
12 relief sought from it. I'll turn it back over to you,
13 Ms. Miller.

14 VICE CHAIR MILLER: Oh, okay. It went to,
15 right, the selling of alcohol under the Reed-Cooke
16 Overlay. I think relief is required. It's not a
17 matter-of-right. And therefore, they would argue that
18 we should have addressed that at the hearing.
19 However --

20 CHAIRPERSON GRIFFIS: Can I just interrupt
21 you? Generally reading the regulations, you would
22 indicate that relief would be required for the sale of
23 alcohol. It's not an assertion of the application
24 that relief is required or not required.

25 VICE CHAIR MILLER: Right, right.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: Okay.

2 VICE CHAIR MILLER: No, I think that was
3 the issue and I don't have the regulations in front of
4 me right now, but that was the generic issue when you
5 were saying that that wasn't the relief that was
6 sought.

7 CHAIRPERSON GRIFFIS: Okay. Good.

8 VICE CHAIR MILLER: However, I also want
9 to add that the opposition had filed a motion to the
10 same effect after the record was closed at the
11 hearing. And at our decision meeting, we denied that
12 motion on grounds that they hadn't presented any good
13 reason as to why they could not have presented the
14 evidence during the hearing.

15 And so I don't see why we wouldn't reach
16 the same result today.

17 CHAIRPERSON GRIFFIS: Excellent.
18 Comments? That's actually the train of thought that
19 I hadn't really gone to and I think that's very
20 pertinent in terms of relying on the record that was
21 previously established on this. I would tend to
22 increase that, based on the record, to say that, in
23 fact, if, and I don't believe and I'm, frankly, very
24 certain that the Board is not making an assertion that
25 relief is or is not required, it was required, it was

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 not requested.

2 And if it's not requested, obviously, it
3 wasn't before us, so how can we bring a motion to
4 reconsideration of our decision, based on relief that
5 actually wasn't requested of us, and having a
6 rehearing on that issue of which wasn't part of the
7 application, would be somewhat fruitless or it would,
8 in fact, be stepping outside of our jurisdiction, I
9 believe, in asserting to an applicant what relief they
10 should come for before us with.

11 So that being said, I think on both of
12 those grounds, which are somewhat similar, I would
13 support denying the motion for reconsideration.
14 Others? Ms. Miller?

15 VICE CHAIR MILLER: They made one other
16 point and that was that in our written order, we
17 didn't address their motion to reopen the record.
18 However, we did address it at the decision meeting and
19 it is in the transcript and we did support our
20 decision with findings. So I don't think that's
21 grounds for granting reconsideration either.

22 CHAIRPERSON GRIFFIS: Excellent. Others?
23 Anything further? Do we have a motion?

24 VICE CHAIR MILLER: I would move that we
25 deny the motion for reconsideration.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 BOARD MEMBER ETHERLY: Second it.

2 CHAIRPERSON GRIFFIS: Thank you, Mr.
3 Etherly. Thank you, Ms. Miller. Further
4 deliberation? There is a motion before us. It has
5 been seconded. I would ask for all those in favor to
6 signify by saying aye.

7 ALL: Aye.

8 CHAIRPERSON GRIFFIS: And opposed?
9 Abstaining? Very well. Mr. Moy?

10 MR. MOY: Staff would record the vote as
11 4-0-0 on the motion of Ms. Miller to deny the motion
12 for reconsideration, seconded by Mr. Etherly. The
13 staff would like to go back to the absentee ballot of
14 Mr. Mann, who had voted to deny the motion for
15 reconsideration as well, so that should give a full
16 and final vote of 5-0-0.

17 CHAIRPERSON GRIFFIS: Excellent. So those
18 absentee ballots don't have a use extended to them.
19 We can use them over and over again.

20 MR. MOY: There was no limitation there.

21 CHAIRPERSON GRIFFIS: Okay. Just as long
22 as we understand that. I'm going to keep a couple of
23 those on file just in case I need a vote once in a
24 while. Excellent. That being said, is there any
25 other business for the Board in the morning session?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MR. MOY: That should be definitive for
2 today, sir.

3 CHAIRPERSON GRIFFIS: Excellent. Thank
4 you very much.

5 (Whereupon, the Public Meeting was
6 concluded at 2:36 p.m.)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25